91-1038

No. _____

Supreme Court, U.S.
FILED
DEC 20 1991
OFFICE OF THE CLERK

In the

Supreme Court of the United States

October Term, 1991

ALPHA LYRACOM SPACE COMMUNICATIONS, INC.,
a Delaware corporation, and
REYNOLD V. ANSELMO, an individual, doing
business as PAN AMERICAN SATELLITE,
a sole proprietorship,

Petitioners,

v.

COMMUNICATIONS SATELLITE CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Daniel R. Shulman
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
3400 City Center
33 South Sixth Street
Minneapolis, Minnesota 55402

Joseph M. Alioto
THE LAW FIRM OF
JOSEPH M. ALIOTO
600 Montgomery Street
Forty-third Floor
San Francisco, California 94111

Attorneys for Petitioners.

1991 — Bachman Legal Printing, 835 Second Ave. So., Mpls., MN 55402 — (612) 339-9518
■ FAX 612-337-8053

QUESTION PRESENTED FOR REVIEW

Despite express Congressional direction in the Communications Satellite Act of 1962 that its "activities ... shall be consistent with the federal antitrust laws," does the Communications Satellite Corporation enjoy absolute immunity from the antitrust laws for monopolistic and anticompetitive activities undertaken by it in its position as a signatory of the International Telecommunications Satellite Organization?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings below are listed in the caption. Petitioner Alpha Lyracom Space Communications, Inc., has no parent company or partially-owned subsidiaries.

TABLE OF CONTENTS

PAGE

OPINIONS BELOW 2

JURISDICTION 2

STATUTES INVOLVED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE PETITION 16

I. The Second Circuit Has Decided An Important Question of Federal Law That Has Not Been, But Should Be, Settled by This Court 16

II. Certiorari Should Be Granted Because the Second Circuit Erred in Deciding the Question Presented, in Conflict with This Court's Decisions on Implied Antitrust Immunity 21

CONCLUSION 25

TABLE OF AUTHORITIES

CASES: **PAGE**

Abbott Laboratories v. Portland Retail Druggists Ass'n, 425 U.S. 1 (1976) 17

California v. Federal Power Commission, 369 U.S. 482, 485 (1962) 17

Communications Satellite Corp. v. FCC, 611 F.2d 883 (DC Cir. 1977) 16

Communications Satellite Corp. v. FCC, 836 F.2d 623 (DC Cir. 1988) 16

Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205 (1979) 17

ITT World Communications, Inc., v. FCC, 725 F.2d 732 (DC Cir. 1984) 16

Nat'l Gerimedical Hosp. v. Blue Cross of Kansas City, 452 U.S. 378 (1981) 17, 21-22, 24

National Association of Broadcasters v. FCC, 740 F.2d 1190 (DC Cir. 1984) 16

Network Project v. FCC, 511 F.2d 786 (DC Cir. 1975) 16-17

Otter Tail Power Co. v. United States, 410 U.S. 366 (1973) 17

TRT Telecommunications Corp. v. FCC, 876 F.2d 134 (DC Cir. 1989) 16

United States v. Philadelphia National Bank, 374 U.S. 321, 350-51 (1963) 17

Western Union Intern., Inc. v. FCC, 804 F.2d 1280 (DC Cir. 1986) 16

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

27 U.S.C. § 1254(1) 2

Communications Satellite Act of 1962, 47 U.S.C. §§ 701 *et seq.* (1982 and Supp. v. 1987) ..... Passim

Fed. R. Civ. Proc. 12(b)(1) 5

Fed. R. Civ. Proc. 6 5

Fed. R. Civ. Proc. 7 5

International Organizations Immunities Act, 22 U.S.C. §§ 288 *et seq.* (1982) and Supp. V (1987) 23

Sherman Antitrust Act, 15 U.S.C. §§ 1, 2 (1988) .. Passim

EXECUTIVE BRANCH DIRECTIVES

Presidential Determination No. 85-2, 3 C.F.R. 254 (1985) 10-11, 17

EXECUTIVE AGREEMENTS AND UNITED NATIONS RESOLUTIONS

Agreements Relating to the International Telecommunications Satellite Organization "INTELSAT," done Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971) ..... Passim

Headquarters Agreement Between the Government of the United States of America and the International Telecommunications Satellite Organization, done Nov. 22 & 24, 1976, entered into force Nov. 24, 1976, 28 U.S.T. 2248, T.I.A.S. No. 8542 (1976) ..... Passim

Operating Agreement Relating to the International Telecommunications Satellite Organization "Intelsat," done Aug. 20, 1971, entered into force February 12, 1973, 23 U.S.T. 4091, T.I.A.S. No. 7532 (1971) ..... Passim

LEGISLATIVE HISTORIES, ARTICLES AND OTHER AUTHORITIES

S. Rep. No. 1584, 87th Cong., 2d Sess. 30, *reprinted in* 1962 U.S. Code Cong. Admin. News 2269-2328 6-7

In re Establishment of Satellite Systems Providing International Communications, F.C.C. Docket No. 84-1229, Report and Order (July 25, 1985) 11, 12

Letter from Nicholas Katzenbach, Deputy Attorney General, to Senator John Pastore, May 7, 1962, *reprinted in* 1962 U.S. Code Cong. Admin. News 2291 8

Statement of the President on Communications Satellite Policy, July 24, 1961, *reprinted in* 1962 U.S. Code Cong. Admin. News 2287-88 7

Transcript of Hearings before the Commmittee on Comerce, United States Senate, 87th Cong., 2d Sess., on S. 2814 and S. 2814, Amendment, April 10, 11, 12, 13, 16, 24, and 26, 1962 7-8

OTHER AUTHORITIES

David J. Markey, *Competition for Intelsat? New Entrants Would Lower Prices, New York Times,* Sunday, March 3, 1985, Sec. III, at 2, col. 3 18

Editorial, "Freedom and Satellites," *The Wall Street Journal,* Wednesday, May 8, 1991, page A-12 18-20

No. _____

In the

Supreme Court of the United States

October Term, 1991

ALPHA LYRACOM SPACE COMMUNICATIONS, INC.,
a Delaware corporation, and
REYNOLD V. ANSELMO, an individual, doing
business as PAN AMERICAN SATELLITE,
a sole proprietorship,

Petitioners,

v.

COMMUNICATIONS SATELLITE CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioners Alpha Lyracom Space Communications, Inc., and Reynold V. Anselmo, doing business as Pan American Satellite (hereafter collectively "PAS") respectively pray this Court to issue a Writ of Certiorari to review the opinion of the United States Court of Appeals for the Second Circuit dated September 30, 1991.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit was rendered on September 30, 1991, and is reported at 946 F.2d 168 (2d Cir. 1991). A copy of the opinion is attached hereto as Appendix ("App.") A. The opinion of the United States District Court for the Southern District of New York was rendered on September 13, 1990. The district court's opinion and order are unreported. A copy of the district court's opinion and order is attached hereto as App. B.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on September 30, 1991. Petitioners have timely filed this Petition for Writ of Certiorari, and the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The following statutes, treaties, and regulations are involved in this case and are set forth in App. D:

Sherman Antitrust Act, §§ 1, 2, 26 Stat. 209, as amended, 15 U.S.C. §§ 1, 2 (1988). (App. D-1)

Communications Satellite Act of 1962, 47 U.S.C. §§ 701 *et seq.* (1988). (App. D-2)

International Organizations Immunities Act, 22 U.S.C. §§ 288 *et seq.* (1988). (App. D-24)

Presidential Determination No. 85-2, 3 C.F.R. 254 (1985). (App. D-38)

Agreement Establishing Interim Arrangements for a Global Communications Satellite System, Aug. 20, 1964, 15 U.S.T. 1705. (App. D-39)

Agreement Relating to the International Telecommunications Satellite Organization "Intelsat," Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971). (App. D-111)

Operating Agreement Relating to the International Telecommunications Satellite Organization "Intelsat," done Aug. 20, 1971, entered into force February 12, 1973, 23 U.S.T. 4091, T.I.A.S. No. 7532 (1971). (App. D-191)

Headquarters Agreement between the Government of the United States of America and the International Telecommunications Satellite Organization, done Nov. 22 & 24, 1976, entered into force Nov. 24, 1976, 28 U.S.T. 2248, T.I.A.S. No. 8542 (1976). (App. D-227)

Documents reproduced in the Appendix are cited "A ___," "B ___," "C ___," or "D ___."

STATEMENT OF THE CASE

This is a case affecting competition in the telecommunications space satellite industry, involving the antitrust immunity of respondent Communications Satellite Corporation ("Comsat"). The decision for which review is sought held that Comsat is immune from United States antitrust laws with respect to all activities undertaken by it as a participant in the International Telecommunications Satellite Organization ("Intelsat"). The court reached this result by construing provisions of the Communications Satellite Act of 1962, 47 U.S.C. § 701 *et seq.* ("the Act") (App. D-2), which created Comsat; and the Headquarters Agreement and other agreements for the formation of Intelsat. No court has previously construed the Act or these Intelsat agreements as they define the antitrust immunity of Comsat. The decision below is likely to affect competition in this vital new industry for years to come and warrants review by this Court.

In creating Comsat, Congress was particularly concerned, and expressly specified, that Comsat's "activities . . . shall be consistent with the federal antitrust laws." 47 U.S.C. § 701(c). (App. D-2) At the same time, Congress authorized the future creation of competitiors to Comsat if "required in the national interest." 47 U.S.C. § 701(d). (App. D-3) In 1984, the President of the United States determined that competitors to Comsat were in fact required in the national interest. The decision for which review is sought in this case will affect the extent to which Comsat may, without fear of antitrust liability, foreclose the competition that both Congress and the President have determined to be in the national interest in an important emerging technology, telecommunications satellites.

This case involves antitrust claims brought against Comsat by a competitor, petitioner PAS. On July 25, 1989, PAS filed its complaint asserting claims under §§ 1 and 2 of the Sherman Act against Comsat in the United States

District Court for the Southern District of New York. Comsat moved to dismiss the complaint "for lack of subject matter jurisdiction, failure to state a claim, and failure to join a necessary and indispensable party. Fed. R. Civ. P. 12(b)(1), (6), (7)." (App. B-2) On September 13, 1990, the District Court granted the motion on the grounds that Comsat enjoyed implied and express antitrust immunity under certain Intelsat agreements, and that PAS had failed to join indispensable parties, specifically Intelsat and its members. (App. B-18, App. B-22)

PAS thereupon took a timely appeal to the Second Circuit, which, on September 30, 1991, affirmed in part and reversed in part the District Court's decision. The Second Circuit affirmed "the District Court's basic ruling that Comsat's conduct as a signatory to Intelsat is immune from antitrust challenge," but reversed and remanded to afford PAS "an opportunity to replead such allegations as they may have concerning Comsat's role as common carrier."[1] (App. A-15)

This case involves international satellite communications, the framework for which was established in 1962 with the passage of the Act. Section 102(a) of the Act declares that it is the policy of the United States to participate in an international commercial communications satellite system. 47 U.S.C. § 701(c) (App. D-2). To effectuate this stated policy, Congress authorized the creation of Comsat, which Congress also stated should be subject to the antitrust laws. 47 U.S.C. § 701(c) (App. D-2).

The provision of the Act authorizing Comsat is Section 301, which provides, "There is hereby authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States government." 47 U.S.C. § 731 (App. D-12).

In creating Comsat, after extensive debate on the issue,

[1] After issuance of the Second Circuit's Mandate and remand to the District Court, PAS on November 13, 1991, filed a Second Amended Complaint in accordance with the Second Circuit decision.

Congress included the following statement of intent in the Act:

> It is the intent of Congress that all authorized users shall have non-discriminatory access to the [global satellite] system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this Act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this Act and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

47 U.S.C. § 701(c) (App. D2, D-3). In the immediately following subsection, Congress provided a statement of its intent not to preclude other competing satellite systems if "required in the national interest." 47 U.S.C. § 701(d) (App. D-3). In another section of the Act, Congress provided for suit by the Attorney General against violation of the Act by Comsat, and specified that any such remedies were in addition to any other rights and remedies available under law. 47 U.S.C. § 743 (App. D-22).

The language of the Act concerning consistency with the Federal antitrust laws was added in the Senate, after certain members of the Commerce Committee, to which the bill was referred, opposed the bill on the ground that it created and fostered a private monopoly.
(Senate Report No. 1584, Minority Views, reprinted at 1962 U.S. Code Cong. Admin. News 2309.)

To assuage these concerns, the Commerce Committee added the statutory language on antitrust consistency. The Commerce Committee explained its action:

> Your committee amended subsection (c) so as to express also the intent of Congress that the activities of the corporation and of the persons or companies participating in its ownership shall be consistent with the Federal antitrust laws. Your committee felt

> that such added declaration of intent was necessary to dispel fears that were expressed that the legislation might be construed as exempting the corporation and the participants therein from the antitrust laws.

(Senate Report No. 1584, reported at 1962 U.S. Code Cong. Admin. News 2275.)

In a statement to Congress dated July 24, 1961, President John F. Kennedy endorsed private ownership and operation of Comsat "provided that such ownership and operation meet the following policy requirements: ***7. Full compliance with antitrust legislation and with the regulatory controls of the government . . ." (July 24, 1961, Statement of the President on Communication Policy, reprinted at 1962 U.S. Code Cong. Admin. News 2287.) In testimony before the Senate Commerce Committee, Assistant Attorney General Nicholas Katzenbach replied to antitrust concerns of Senator Estes Kefauver, as follows:

> Senator Kefauver, as I understand him, seemed to feel that in some way the antitrust laws were suspended by the creation of this corporation. That is certainly not the view of the Department of Justice. They aren't in any sense suspended. The antitrust laws apply to what is done in this corporation, to any conspiracies which are created with an intent to dominate or to lessen competition. Indeed, the whole thrust of the Department of Justice's participation in this bill has been to make the communications system more competitive and to use this as a device for ensuring that no single carrier would get monopoly control over this great new satellite system.

When queried further by Senator Ralph Yarborough, about whether the Act created an exemption to the antitrust laws, Mr. Katzenbach replied:

> Let me be clear. It does exempt to the extent that it permits these carriers to participate in this corporation, which could conceivably otherwise be a joint venture, which could be precluded by the

> antitrust laws. To the extent that they are permitted by this law to invest in this corporation, it modifies what might otherwise be the situation.
>
> Beyond that, as I have stated, I don't think that it would modify the antitrust laws any further than that. It has been my understanding that those who have said it was modifying the antitrust laws have had simply that point in mind. But I would have no objection to explicit provisions that stated that the antitrust laws were continued to be in full force and effect with respect to the participants in this venture.

Transcript of Hearings before the Committee on Commerce United States Senate, 87th Congress, 2d Sess., on S. 2814 and S. 2814, Amendment, April 10, 11, 12, 13, 16, 24, and 26, 1962, at pp. 347 and 350. On May 7, 1962, Mr. Katzenbach stated similar views in a letter to Senator John Pastore of the Commerce Committee (reprinted in 1962 U.S. Code Cong. Admin. News 2291.)

In 1964 the United States joined with other countries to form an international consortium, Intelsat, to own and operate a global commercial communications satellite system. The organization and operation of Intelsat were formalized in two later agreements, commonly referred to as the Definitive Agreement and the Operating Agreement.[2]

Pursuant to the Definitive Agreement, two levels of affiliation with Intelsat exist. The first level consists of the Intelsat members or parties, which are the countries themselves that belong to Intelsat. The second level consists of the Intelsat signatories to the Operating Agreement. Each signatory is the entity designated by its

---

[2] The full titles are, respectively, the *Agreement Relating to the International Telecommunications Satellite Organization "Intelsat,"* done Aug. 20, 1971, entered into force February 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971) (App. D-111), and the *Operating Agreement Relating to the International Telecommunications Satellite Organization "Intelsat,"* done Aug. 20, 1971, entered into force February 12, 1973, 23 U.S.T. 4091, T.I.A.S. No. 7532 (1971) (App. D-191).

member country to enter into Intelsat agreements, partipate in the actual ownership and commercial exploitation of Intelsat satellites, and promote the interests and policies of the member country it represents. Comsat was designated as the Intelsat signatory for the United States. (App. A-2, A-3, B-4)

Article XV(c) of the Definitive Agreement dealt with the subject of immunity from possible legal liability for Intelsat participants:

> Each Party in whose territory the headquarters of Intelsat is located [the United States] shall grant in accordance with the Protocol referred to in this paragraph, and the Party in whose territory the headquarters of Intelsat is located shall grant in accordance with the Headquarters Agreement . . . the appropriate privileges, exemptions, and immunities to Intelsat, to its officers, and to those catagories of its employees specified in such Protocol and Headquarters Agreement, to Parties and representatives of Parties, to signatories and representatives of signatories, and to persons participating in arbitration proceedings. In particular, each Party shall grant to these individuals immunity from legal process in respect of acts done or words written or spoken in the exercise of their functions and within the limits of their duties, to the extent and in the cases to be provided for in the Headquarters Agreement and Protocol referred to in this paragraph.

(App. D-153, D-154).

In 1976, the United States, as host country of Intelsat, entered into a Headquarters Agreement with Intelsat, known formally as *Headquarters Agreement between the Government of the United States of America and the International Telecommunications Satellite Organization,* done Nov. 22 & 24, 1976, entered into force Nov. 24, 1976, 28 U.S.T. 2248, T.I.A.S. No. 8542 (1976) (App. D-227).

Paragraph 16 of the Headquarters Agreement provided that:

> . . . [T]he representatives of the Parties and of the Signatories . . . shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be waived . . . by the Parties and Signatories for their representatives . . . .

(App. D-232)

Today, there are at least 117 member countries and signatories in Intelsat, which owns and operates a global system of communications satellites providing international telecommunications services to more than 170 countries, territories, and dependencies, and domestic telecommunications services to over 30 countries. (App. B-3, B-4) As the United States signatory to Intelsat, Comsat has been the exclusive marketer in the United States of capacity and services for Intelsat satellites. (App. C-18)

On May 31, 1984, PAS submitted an application to the Federal Communications Commission ("FCC") for permission to operate an international space satellite telecommunications system in competition with Comsat and Intelsat, with primary emphasis on service to Central and South America, where Comsat and Intelsat were providing relatively minimal service. (App. C-9) On June 15, 1988, following approval of its application as described hereafter, PAS launched an international commercial space telecommunications satellite, PAS-1, at a total cost in excess of $100 million. PAS thus became the first private business in history to own and operate an international commercial communications satellite outside and in competition with the Intelsat system. (App. C-13, C-14, C-28)

On November 28, 1984, six months after PAS filed its application at the FCC, the President of the United States signed a Presidential Determination (P.D. No. 85-2) that

alternative satellite systems, such as PAS, in competition with Comsat and Intelsat, were "required in the national interest" within the meaning of §§ 102(d) and 201(a) of the Act. (App. D-38) The Presidential Determination further stated that the United States should consult with Intelsat regarding such systems "as are authorized by the Federal Communications Commission."

On September 3, 1985, the FCC issued a report and order in which it determined "that the authorization of these separate satellite systems [including PAS] according to the Executive Branch restrictions will be in the public interest." *In Re Establish of Satellite Systems Providing International Communications,* F.C.C. Docket No. 84-1229, Report and Order at ¶ 5 (July 25, 1985). The FCC required, however, that separate satellite systems complete a consultation process with Intelsat member countries as a pre-condition to obtaining final FCC approval, pursuant to Articles XIV(c) and (d) under the Intelsat Operating Agreement.

Articles XIV(c) and (d) regulate competition in international satellite services. Articles XIV(c) and (d) of the Operating Agreement provide that before a party or signatory may engage in or permit competition with Intelsat, the party or signatory must consult with Intelsat "to ensure technical compatibility" and "to avoid significant economic harm to the global system of Intelsat."

As of 1985, Intelsat did not provide high-powered coverage of Ku-band of C-band frequencies to South America for any services. PAS proposed such coverage, which would be significant in the reduction or elimination of the need for land line or microwave facilities, and in achieving lower earth station size and cost. The FCC determined that PAS "clearly will provide a grade of service comparable to a typical domestic satellite system, and there is no question that, given the cost of earth stations necessary for Intelsat services, the savings in those costs can be great enough to reduce substantially overall system costs by the use of PanAmSat satellites."

In Re Establishment of Satellite Systems Providing International Communications, F.C.C. Docket No. 84-1229, Report and Order at ¶ 77 (July 25, 1985).

To establish a commercial telecommunications satellite system, PAS engaged in (1) negotiations with actual and prospective customers and users of PAS-1, (2) negotiations with Intelsat signatories and members from whom PAS needed to secure Article XIV(c) and Article XIV(d) consultations at Intelsat, and (3) negotiations with Intelsat signatories and others for agreements to allow the receipt and dissemination of the PAS-1 signal within the host country. In its capacity as the United States signatory to Intelsat, Comsat was responsible for facilitating, coordinating, and conducting Article XIV(c) and Article XIV(d) consultations on behalf of PAS, and for implementing and effectuating the United States policy that separate competing satellite systems were required in the national interest. Comsat, however, was also a direct competitor of PAS (App. C-14, C-15).

Since its entry into the international telecommunications market, PAS has been frustrated by a variety of actions by Comsat, specifically designed to delay and impede successful entry and competition by PAS. Comsat's continued conduct resulted in PAS' filing this lawsuit in the United States District for the Southern District of New York, for violations of §§ 1 and 2 of the Sherman Act.[3]

In its Complaint, PAS charged Comsat with a variety of anticompetitive conduct in violation of §§ 1 and 2 of the Sherman Act. The Court of Appeals viewed the anticompetitive conduct charged by PAS as falling into two catagories: (1) conduct by Comsat in its role as a signatory and participant in Intelsat; and (2) conduct by Comsat in its role as a common carrier and competitor of PAS, apart from and outside of Intelsat.

In the former category, conduct by Comsat in its role in

[3] PAS also asserted a common law count for interference with prospective advantage. Issues with respect to this common law count are not raised by the question presented and are not before this Court.

Intelsat, PAS charged that Comsat had engaged in the following anticompetitive activities:

(a) "... [I]n April of 1984, Comsat instigated, voted for, participated in, and caused to be adopted a resolution by Intelsat signatories 'to refrain from entering into any arrangements which may lead to the establishment and subsequent use of' competing alternative satellite systems 'to carry traffic to or from their respective countries.' This was an express agreement to boycott competing systems, including PAS. On at least two subsequent occasions, Comsat joined with Intelsat signatories to ratify and reaffirm the boycott resolution." ¶ 28(d), First Amended Complaint;

(b) "Comsat has delayed, impeded, and failed to implement and conduct in good faith Article XIV(c) and Article XIV(d) Intelsat consultations on behalf of PAS." ¶ 28(e), First Amended Complaint;

(c) "Comsat has entered into numerous agreements with Intelsat signatories to refuse to deal with PAS or to delay and impede Article XIV(c) and Article XIV(d) Intelsat consultations." pp. 28(d), 28(h), 28(i), 28(k), 28(l), 28(m), 28(g), 28(n), 28(p), 28(q), 28(r), 28(t), First Amended Complaint;

(d) "Comsat ... has caused and instigated Intelsat to price, and has agreed, combined, and conspired with other Intelsat signatories to cause and instigate Intelsat to price satellite telecommunications services either without regard to cost, below average variable cost, or at a predatory level ..." ¶ 28(g), First Amended Complaint;

(e) "Comsat has caused and instigated Intelsat, and has agreed, combined, and conspired with other Intelsat signatories to refuse to deal with PAS and to instigate and cause Intelsat, to acquire satellite capacity with the purpose and effect of preventing the acquisition of additional satellite capacity by alternative satellite systems, including PAS ..." ¶ 28(h), First Amended Complaint.

In the second category, conduct undertaken by Comsat as a common carrier outside of Intelsat, PAS alleged the

following activities:

(a) Outside of Intelsat, Comsat has entered into agreements with communications companies, potential joint venture partners of PAS, and potential customers of PAS not to do business with PAS and to boycott PAS. ¶¶ 28(d), 28(i), 28(j), 28(k), 28(l), 28(m), First Amended Complaint;

(b) Comsat has engaged in a pattern of tracking the efforts of PAS to establish beneficial commercial relationships in various countries throughout the world, and, when PAS appears close to obtaining such relationships, Comsat has taken action to interfere with and preempt these relationships, by forming its own alternative commercial arrangements, for the sole purpose of injuring and foreclosing competition from PAS. ¶¶ 28(j), 28(k), 28(l), 28(m), 28(n), First Amended Complaint;

(c) Comsat has disparaged PAS to actual and potential customers, and has made misrepresentations to actual and prospective customers of PAS, to the effect that PAS will be unable to obtain necessary approvals and commercial relationships. ¶ 28(f), First Amended Complaint;

(d) Comsat has made such misrepresentations and disparaging remarks to the United States Government, in order to foreclose opportunities for PAS to do business with the Government. ¶¶ 28(o), 28(s), First Amended Complaint;

(e) "Comsat has priced . . . satellite telecommunications services either without regard to cost, below average variable cost, or at a predatory level, having the purpose and intended effect of discouraging and excluding competition from alternative satellite systems, including PAS." ¶ 28(g), First Amended Complaint;

(f) Comsat has entered into an agreement with certain European competitors to offer "end to end" service between the United States and Europe for the sole purpose of injuring and foreclosing competition from PAS. ¶ 28(i), First Amended Complaint.

(g) Comsat has filed a sham opposition to an application of Reynold V. Anselmo to obtain a federal income tax deferral with respect to the development, purchase, and launch of PAS-1. ¶ 28(u), First Amended Complaint;

(h) "Comsat has refused to do business with PAS," by declining to purchase satellite services from PAS. ¶ 28(v), First Amended Complaint;

(i) "Comsat has further represented to actual and prospective customers of PAS that PAS does not have and cannot and will not obtain additional satellite capacity . . ." ¶ 28(y), First Amended Complaint.

The complaint contained no allegations claiming that Comsat has violated the antitrust laws in following or carrying out any instructions of the United States Government or any of its agencies or officials.

Relying on the language of the Headquarters Agreement, the Second Circuit held that PAS could not maintain antitrust claims for any activities undertaken by Comsat in its role as Intelsat signatory, but could amend its Complaint to allege antitrust violations by Comsat acting as a common carrier outside of Intelsat.

The specific language relied upon by the Second Circuit is the clause in ¶ 16 of the Headquarters Agreement that states, "[T]he representatives of the parties and of the signatories . . . shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be waived by . . . the parties and signatories for their representatives . . ." According to the Second Circuit, in a statement that contains the essence of its reasoning, "Having created Comsat to wield monopoly power, along with the other participants in a global satellite system, Congress did not expect that corporation to face antitrust liability in deciding, as a member of Intelsat, whether and to what extent to permit competition." (App. A-12) This, of course, is the very question presented by this petition.

Finally, the Second Circuit rationalized its holding with the antitrust consistency language and legislative

history of the Act, by reading the Act and the legislative history to mean that Congress intended the antitrust laws to apply only to Comsat's activities as a common carrier, outside of Intelsat, not to its functions as a signatory.

From this decision, PAS petitions for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

I. *The Second Circuit Has Decided An Important Question of Federal Law That Has Not Been, But Should Be, Settled by This Court*

The issue of Comsat's immunity under the antitrust laws presents, in essence a legal singularity, a situation in which a court has construed a statute without the aid of prior decisions and without the likelihood of subsequent decisions that may correct or temper its holding, which will have a profound effect for years to come on competition in an important emerging industry. Although the Act has been in effect since 1964, no court has previously addressed the scope of Comsat's immunity under the antitrust laws. *See, TRT Telecommunications Corp. v. FCC,* 876 F.2d 134 (DC Cir. 1989) (review of FCC earth station licenses); *Communications Satellite Corp. v. FCC,* 836 F.2d 623 (DC Cir. 1988) (review of FCC action on application to provide satellite service between the United States and Jamaica); *Western Union Intern., Inc. v. FCC,* 804 F.2d 1280 (DC Cir. 1986) (review of FCC orders with respect to Comsat); *National Association of Broadcasters v. FCC,* 740 F.2d 1190 (DC Cir. 1984) (review of FCC orders regarding direct broadcast satellite service regulations); *ITT World Communications, Inc. v. FCC,* 725 F.2d 732 (DC Cir. 1984) (review of FCC orders permitting Comsat to sell satellite services directly to public); *Communications Satellite Corp. v. FCC,* 611 F.2d 883 (DC Cir. 1977) (review of FCC orders regarding Comsat rates); *Network Project v. FCC,* 511 F.2d 786 (DC

Cir. 1975) (review of FCC orders permitting domestic satellite facilities). Thus, the question presented by this petition has not been addressed before, and may not be addressed again. Yet while the Second Circuit decision stands, it permits Comsat to use its position in Intelsat for foreclose competition that the President has declared to be in the national interest.

In addition, the question presented is an important one that ought to be decided by this Court.

First, the question is important because it involves immunity from the antitrust laws. "It is well settled that exemptions from the antitrust laws are to be narrowly construed [citations omitted]. This doctrine is not limited to implicit exemptions from the antitrust laws, but applies with equal force to express statutory exemption." *Group Life & Health Insurance Company v. Royal Drug Company,* 440 U.S. 205, 231 (1979). Moreover, here, the immunity is largely by implication: the literal language of the Headquarters Agreement does not confer the claimed immunity, which the Second Circuit found only by construing both the Headquarters Agreement and the Act in light of perceived Congressional intent. As this Court has frequently stated and restated, however, implied immunity from the antitrust laws is disfavored and to be strictly construed. *Nat'l Gerimedical Hosp. v. Blue Cross of Kansas City,* 452 U.S. 378, 388-89 (1981); *Abbott Laboratories v. Portland Retail Drug Association,* 425 U.S. 1, 11-12 (1976); *California v. Federal Power Commission,* 369 U.S. 482, 485 (1962); *United States v. Philadelphia National Bank,* 374 U.S. 321, 350-51 (1963); *Otter Tail Power Co. v. United States,* 410 U.S. 366, 372 (1973).

Second, this Court ought to grant certiorari because communications satellites involve an important area of new technology, where the President of the United States has expressly declared that competition is "required in the national interest." November 28, 1984 Presidential Determination (PD No. 85-2) (App. D-38). Following the President's determination, one administration official

writing in the *New York Times* described the importance and future of satellite telecommunications in the following terms:

> President Reagan determined last November that the national interest would best be served by allowing privately-owned United States satellite systems into international communications. For Intelsat, the non-profit communications cooperative that has provided the bulk of international communications for the last two decades, as well as the users of international communications, President Reagan's action and the likely emergence of private satellite systems, signal the start of an era of greater competition and technological progress.
>
> International communications, forecast to grow by more that 14% in 1985, constitute perhaps the fastest growing component of the telecommunications industry. The services involved (video, data, and voice transmissions in both the corporate and consumer sectors) are critical to a diversity of important United States interests -- expanded foreign commerce and investment, greater American trade and services, foreign policy and an effective national defense.

David J. Markey, *Competition for Intelsat? New Entrants Would Lower Prices, New York Times*, Sunday, March 3, 1985, Sec. III, at 2, col. 3. As recently as May 8, 1991, *The Wall Street Journal* ran an editorial underscoring the importance of PAS' efforts to bring competition to global telecommunications:

> The revolts of 1989 from Tiananmen and Wenceslaus Squares, show that the spread of democracy and freedom has been abetted by the fax machine and satellite. So why are lobbyists and some U.S. officials trying to block competition in global telecommunications?
>
> That's exactly what's happening in a remarkable

lobbying campaign to prevent greater competition to Intelsat, the global satellite cartel. PanAmSat, a 1980 start-up that serves such companies as CNN, is petitioning to tap into the American telephone-switching network. Intelsat is now the only satellite system that has that right, a restriction that lets it dominate the international market for satellite telephone calls and switched-data transfers (such as this editorial). How the Bush administration decides the issue will say a lot about what it means by a "new world order."

PanAmSat is trying to do in international markets what MCI did in domestic long distance service by fighting to end AT&T's monopoly. Global competition would help reduce prices for international long distance calls, which are still dominated in most of the world by government-owned monopolies. More broadly, more competition would make it easier and cheaper for more of the world's people to tap into the information age.

So why would anyone want to stop it? The answers are the power of the status quo and some outmoded notions about national security. Naturally, Intelsat, a user-owned cooperative involving 119 nations, doesn't want to lose its privileged status. But the irony is that Intelsat (founded in 1965) is by now so well established that it could do very well in the competitive marketplace.

The same isn't true of a company called Comsat, which has the sole right of access to Intelsat from the U.S. No other U.S. company -- not AT&T, not CNN, no one -- can deal directly with Intelsat. Comsat charges fees to access Intelsat, a windfall that has let it grow so fat it can afford to buy such things as the Denver Nuggets. Comsat would suffer in a competitive world satellite market, which is why it's paying so many big time lobbyists to stop any

change.

* * *

> Intelsat was founded in 1965 by U.S. initiative and there's no doubting its success. But time and technology have changed the world. Nations -- and more important, individual citizens and businesses --can be wired faster and more cheaply if satellite networks are open to complete competition. A country that prizes freedom should be the last to block this progress.

Editorial, "Freedom and Satellites," *The Wall Street Journal,* Wednesday, May 8, 1991, page A-12.

Third, this Court should grant certiorari because the record created by Congress shows that Congress knew and was deeply concerned that it was creating a monopoly, and therefore was particularly intent on ensuring that Comsat remain subject to the antitrust laws. This concern and intent are spread all over the congressional record of proceedings leading to the Act's passage. From the initial letter of President Kennedy, to the testimony of Assistant Attorney General Katzenbach, to the statements of Senators Kefauver and Pastore, to the amendment of the Act in committee to include the antitrust consistency language, the record demonstrates that, although Congress knowingly invested Comsat with a monopoly, Congress intended that any abuse of that monopoly power should be subject to the antitrust laws.

Finally, this Court should grant certiorari because the Second Circuit decision frustrates both the national policy announced by President Reagan, that competition in satellite systems is required in the national interest, and the intent of Congress that Comsat be subject to the antitrust laws. Lest there be any doubt on this point, the Second Circuit could not have been more explicit in saying that Comsat was free, without fear of antitrust liability, to do whatever it could to thrwart competition by

use of its position in Intelsat.

> Having created Comsat to wield monopoly power, along with the other participants in a global satellite system, Congress did not expect that corporation to face antitrust liability in deciding, as a member of Intelsat, whether and to what extent to permit competition.

(App. A-12) With all due respect, this is exactly what Congress did expect. It expected that Comsat would indeed face antitrust liability for deciding, as a member of Intelsat, whether and to what extent to permit competition, and then acting accordingly to foreclose competition, such as by organizing boycotts of PAS and preventing PAS from obtaining necessary Intelsat consultations.

The Second Circuit decision thus frustrates and creates a conflict with national policy, as determined by the Executive Branch, and with Congressional intent, as expressed in the Act itself and its legislative history. For these reasons, this Court ought to grant certiorari.

II. *Certiorari Should Be Granted Because the Second Circuit Erred in Deciding the Question Presented, in Conflict with This Court's Decisions on Implied Antitrust Immunity*

The Second Circuit's grant of implied immunity to Comsat runs directly counter to the principles enunciated by this Court in *National Gerimedical Hospital v. Blue Cross*, 452 U.S. at 388-89:

> On a number of occasions, this Court has faced similar claims of antitrust immunity in the context of various regulated industries. The general principles applicable to such claims are well established. The antitrust laws represent a "fundamental national economic policy." [Citations omitted.] "Antitrust immunity is not favored, and can be justified only by a convincing showing of clear repugnancy between the antitrust laws and the regulatory system." [Citations omitted.] "Repeal is to be regarded as

> implied only if necesure, where Congress did intend to repeal the antitrust laws, that intent governs [citation omitted], but this intent must be clear. Even when an industry is regulated substantially, this does not necessarily evidence an intent to repeal the antitrust laws with respect to every action taken within the industry.

Here, the Second Circuit construed ¶ 16 of the Headquarters Agreement to provide immunity when such a reading was required by neither language, logic, nor legislative history.

Paragraph 16's immunity "from suit and legal process relating to acts performed by them in their official capacity and falling within their functions" applies expressly to "representatives of the parties and of the signatories," not to the parties and signatories themselves. If the Executive Branch has intended immunity for signatories, which is what Comsat is, it could have specifically conferred the immunity on them as "signatories," not as "representatives of parties," particularly since the paragraph also expressly refers to signatories and their representatives. Had the Executive Branch intended immunity for signatories, the language would have been "the parties, the signatories, and their representatives shall be immune," or something similar, not the present language, which requires the convoluted and redundant construction imposed by the Second Circuit. Further, the paragraphs of the Headquarters Agreement immediately preciding and following ¶ 16 demonstrate that whatever immunity ¶ 16 confers is limited to actual persons and individuals acting as representatives of signatories and parties, and is not a general grant to the signatories themselves. Paragraphs 14 and 15 deal with the presence of aliens in the United States, while ¶ 17 makes express that the Headquarters Agreement is intended to apply to actual persons, and to bestow upon them a form of traditional diplomatic immunity. This language is in large part substantially

verbatim the language or the International Organizations Immunities Act, 22 U.S.C. § 288(e), which does not provide immunity for the constituent members of international organizations, but only for the organizations themselves, and their officers and employees and other persons representing foreign governments belonging to the organizations. Paragraph 16's immunity was meant, in general, to be a "parking ticket" immunity for natural persons, not a blanket antitrust immunity for Intelsat signatories.

Indeed, in its decision, the Second Circuit acknowledged that "these contentions [of PAS] have some force," but chose to construe ¶ 16 to confer immunity based on "other considerations." (App. A-11)

These "other considerations" consisted of the mistaken view that "Congress could not have intended to require Comsat to participate in Intelsat subject to Executive Branch directives and, at the same time, have intended that Comsat proceed at its own antitrust peril in carrying out that official role," and that "Congress did not expect . . . Comsat to face antitrust liability in deciding, as a member of Intelsat, whether and to what extent to permit competition." (App. A-12)

As shown, however, Congress intended exactly that. Moreover, the Second Circuit, as did the district court, misread PAS' complaint in this regard. The complaint nowhere and in no particular alleges that Comsat should be liable under the antitrust laws for following or executing any instruction or directive of the United States Government or any of its agencies. Nowhere does PAS seek to premise liability on Comsat's execution of State Department instructions, directives of the FCC, or policy of any other branch or agency of government. To the contrary, PAS seeks to hold Comsat accountable only for actions taken on its own initiative, and indeed contrary to, and in frustration of, government policy to promote competition in space satellites. Thus, PAS seeks to hold Comsat liable for organizing boycotts, obstructing Intelsat consultations, and other anticompetitive

activities Comsat has entered into at Intelsat purely in its discretionary functions, and not by reason of any governmental directive or instruction. PAS' complaint thus presents no conflict or inconsistency between the federal antitrust laws and the Act's requirements that Comsat act in certain respects subject to instructions of the government. The Second Circuit has created a conflict where none exists, in derogation of this Court's admonitions in *National Gerimedical* and other cases addressing antitrust immunity.

For this reason, as well as to implement Congressional intent and prevent the frustration of national policy as declared by the President, this Court should grant certiorari.

CONCLUSION

For the reasons stated hereinabove, petitioners respectfully request that this Court grant their petition for a Writ of Certiorari.

Dated this 20th day of December, 1991.

Respectfully submitted,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

THE LAW FIRM OF
JOSEPH M. ALIOTO

Counsel for Petitioners

Daniel R. Shulman
Joseph M. Alioto

INDEX TO APPENDIX

TITLE PAGE

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware corporation, REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship, v. COMMUNICATIONS SATELLITE CORPORATION. (Docket No. 90-7893) (Decision) A-1

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware corporation, REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship, v. COMMUNICATIONS SATELLITE CORPORATION. (89 CIV. 5021 JFK) (Opinion and Order) B-1

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware corporation, REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship, v. COMMUNICATIONS SATELLITE CORPORATION. (89-CIV-5021 JFK) (First Amended Complaint - Jury Trial Demanded) C-1

STATUTES, TREATIES, AND REGULATIONS

Sherman Antitrust Act, §§ 1, 2, 26 Stat. 209, as amended, 15 U.S.C. §§ 1, 2 (1988). D-1

Communications Satellite Act of 1962, 47 U.S.C. §§ 701 *et seq.* (1988). D-2

International Organizations Immunities Act, 22 U.S.C. §§ 288 *et seq.* (1988). D-24

Presidential Determination No. 85-2, 3 C.F.R. 254 (1985). D-38

Agreement Establishing Interim Arrangements for a Global Communications Satellite System, Aug. 20, 1964, 15 U.S.T. 1705. ..... D-39

Agreements Relating to the International Telecommunications Satellite Organization, "Intelsat," done Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971). D-111

Operating Agreement Relating to the International Telecommunications Satellite Organization "Intelsat," done Aug. 20, 1971, entered into force February 12, 1973, 23 U.S.T. 4091, T.I.A.S. No. 7532 (1971) D-191

Headquarters Agreement between the Government of the United States of America and the International Telecommunications Satellite Organization, done Nov. 22 & 24, 1976, entered into force Nov. 24, 1976, 28 U.S.T. 2248, T.I.A.S. No. 8542 (1976). D-227

APPENDIX A

United States Court of Appeals
For The Second Circuit

No. 977 — August Term 1990

Argued: April 22, 1991 Decided: Sep. 30, 1991

Docket No. 90-7893

ALPA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware Corporation;
REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship,
Plaintiffs-Appellants,

v.

COMMUNICATIONS SATELLITE CORPORATION,
Defendant-Appellee.

Before: NEWMAN AND KEARSE, *Circuit Judges*, and STANTON, *District Judge.**

Appeal from the September 14, 1990, judgment of the District Court for the Southern District of New York (John F. Keenan, Judge) dismissing an antitrust complaint on the ground of immunity of defendant as United States representative to international satellite organization.

Reversed and remanded to permit filing of amended complaint alleging conduct not shielded by immunity.

Joseph M. Alioto, San Francisco, Cal. (Alioto and Alioto, San Francisco, Cal.; Daniel R. Shulman, Gray, Plant, Mooty, Mooty & Bennett, Minneapolis, Minn.; and David L. Marks, Marks and Marks, New York, N.Y., on the brief), for plaintiffs-appellants.

*The Honorable Louis L. Stanton of the District Court for the Southern District of New York, sitting by designation.

A. Duncan Whitaker, Wash., D.C. (Alan M. Wiseman, Mark D. Wegener, Jerrold J. Ganzefried, Howrey & Simon, Wash., D.C.; Thomas J. Sweeney, III, Davis, Markel & Edwards, New York, N.Y.; and Willard R. Nichols, Warren Y. Zeger, Keith H. Fagan, Communications Satellite Corp., Wash., D.C., on the brief), for defendant-appellee.

JON O. NEWMAN, *Circuit Judge:*

This appeal concerns primarily the issue whether the Communications Satellite Corporation ("COMSAT") is immune from antitrust liability for activity undertaken in its role as the United States representative to the International Telecommunications Satellite Organization ("INTELSAT"). The issue arises on an appeal from the September 14, 1990, judgment of the District Court for the Southern District of New York (John F. Keenan, Judge) dismissing the complaint of plaintiffs Alpha Lyracom Space Communications, Inc. and Reynold V. Anselmo, doing business as Pan American Satellite, (collectively "PanAmSat") alleging that COMSAT violated the antitrust laws and tortiously interefered with their relations with prospective customers. COMSAT, a private corporation created by the Communications Satellite Act of 1962 ("CSA"), 47 U.S.C. § 701 *et seq.* (1988), serves as the United States' "signatory" to INTELSAT. INTELSAT and its 119 nation members and their designated signatories collectively maintain and operate an international network of telecommunications satellites, ground stations, and other satellite support facilities. PanAmSat, owner and operator of the first international commercial communications satellite outside of INTELSAT, brought suit alleging that COMSAT, through INTELSAT and in conjunction with other signatories, engaged in a variety of anticompetitive practices in the market for international commercial satellite telecommunications services. We conclude that dismissal on the ground of immunity was proper, but because

appellants are entitled to an opportunity to amend their complaint to replead allegations that might not encounter an immunity defense, we reverse and remand.

Background

The Regulatory Framework. Congress enacted the Communications Satellite Act of 1962 to implement the national policy of establishing "in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system." 47 U.S.C. § 701(a). Rather than relying solely on governmental efforts, Congress sought to "provide for the widest possible participation by private enterprise," 47 U.S.C. § 701(c), by creating COMSAT, a publicly held, private corporation, 47 U.S.C. §§ 731, 734(a), to act "subject to appropriate governmental regulation," 47 U.S.C. § 701(c), as the "United States participa[nt] in the global system." *Id.* Under the Act, COMSAT assumed responsibility for planning, constructing, and operating the satellite system, including satellite terminal stations, 47 U.S.C. § 735(a)(3), "itself or in conjunction with foreign governments," 47 U.S.C. § 735(a)(1), and for leasing space satellite telecommunications channels to communications common carriers, 47 U.S.C. § 735(a)(2).

The Act imposes a duty on COMSAT to "comply . . . with all provisions of th[e] chapter," 47 U.S.C. § 743(c), and authorizes a district court, on application of the Attorney General, to enjoin COMSAT from taking any action or adopting any practices or policies inconsistent with "the policy and purposes declared in section 701" of the Act, *id.* § 743(a). Subsection 701(c) declares the general intent of Congress to foster competition in the operation of, and provision of equipment, services, and access to, the satellite network. Subsection 701(c) concludes with the so-called "antitrust consistency clause," which provides that:

> [T]he activities of the corporation created under this chapter and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

In 1964, two years after passage of the Act, the United States and ten other nations entered into an interim executive agreement that created the International Telecommunications Satellite Organization (INTELSAT). *See Agreement Establishing Interim Arrangements for a Global Communications Satellite System,* Aug. 20, 1964, 15 U.S.T. 1705. The member-nations later executed two additional executive agreements formalizing the ground rules for INTELSAT's control and management of the international satellite network and related support facilities. These agreements are known as "the Definitive Agreement" and "the Operating Agreement." The Definintive Agreement (officially, *Agreement Relating to the International Telecommunications Satellite Organization 'INTELSAT'")* was executed by the government of each member-nation. It established a three-tiered organizational structure for INTELSAT, comprising the Assembly of Parties, the Meeting of Signatories, and the Board of Governors. Each member-nation or "Party" has a seat on the Assembly of Parties, and each member's designated "Signatory" to the Operating Agreement (officially, *Operating Agreement Relating to the International Telecommunications Satellite Organization 'INTELSAT'")* is represented in the Meeting of Signatories and the Board of Governors. The United States designated the State Department as its representative to the Assembly of Parties and COMSAT as its signatory and representative to the Meeting of Signatories.

Together, the Definitive and Operating Agreements give the Assembly of Parties, the Meeting of Signatories, and the Board of Governors virtually plenary authority to set rates for use of INTELSAT satellite capacity, Definitive Agreement Arts. V(d), VIII(b)(v)(C), X(a)(viii); Operating Agreement Art. 8(a), to approve INTELSAT's purchases of goods and services, Definitive Agreement Arts. X(a)(ii), XIII; Operating Agreement Art. 16, and to approve proposals to establish international and domestic telecommunications satellite systems separate from

INTELSAT. In particular, an applicant for a separate system providing *international* satellite service must engage in "consultation" with the Assembly of Parties and the Board of Governors to ensure the technical compatibility of its system with INTELSAT and to guard against the possibility that the competing system might result in "significant economic harm" to INTELSAT. Definitive Agreement Art. XIV(d). Those seeking to provide separate *domestic* satellite services need "consult" only with the Board of Governors to ensure technical compatibility. *Id.* Art. XIV(c).

In 1976, the United States, as host country of INTELSAT, entered into an agreement with INTELSAT known as the Headquarters Agreement. Among other things, this agreement includes an immunity provision central to this litigation.

After the creation of INTELSAT, the Executive Branch continued to exercise its substantial authority under the Communications Satellite Act to oversee and regulate COMSAT's management and operation of the system and its relations with foreign governments and their designated satellite management entities, 47 U.S.C. §§ 721, 732-33, 742. Pursuant to the directive in section 721(a)(4) to oversee COMSAT's relations with foreign governments, Executive Order No. 12,046 specifies that "[w]ith respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies." 43 Fed. Reg. 13,349, 13,354 (1978). In particular, the Secretary should "instruct[] [COMSAT] in its role as the designated United States representative to [INTELSAT]" and "direct the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962." *Id.; see also Procedures for U.S. Government Instruction of the Communications Satellite Corporation in its Role as U.S. Representative to the Interim Communications Satellite*

Commission, 77 F.C.C.2d 564 (1980); 1984 Memorandum of Understanding among the Departments of State and Commerce and the Federal Trade Commission.

The Definitive and Operating Agreements each include provisions that contemplate the possible imposition of legal liability against INTELSAT signatories. Article XV(c) of the Definitive Agreement provides:

> Each Party other than the Party in whose territory the headquarters of INTELSAT is located [the United States] shall grant in accordance with the Protocol referred to in this paragraph, and *the Party in whose territory the headquarters of INTELSAT is located [the United States] shall grant in accordance with the Headquarters Agreement . . . the appropriate* privileges, exemptions and *immunities* to INTELSAT, to its officers, and to those categories of its employees specified in such Protocol and Headquarters Agreement, to Parties and representatives of Parties, *to Signatories and representatives of Signatories* and to persons participating in arbitration proceedings. In particular, *each Party shall grant to these individuals immunity from legal process in respect of acts done or words written or spoken in the exercise of their functions and within the limits of their duties, to the extent and in the cases to be provided for in the Headquarters Agreement and Protocol referred to in this paragraph.*

Definitive Agreement Art. XV(c) (emphasis added). The United States, in fulfillment of its obligations under Article XV(c), provided in paragraph 16 of the Headquarters Agreement that the

> officers and employees of INTELSAT, *the representatives of the Parties and of the Signatories* . . . shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be waived by the head of the executive organ of INTELSAT for its

officers and employees, [and] by the Parties and Signatories for their representatives . . . ."

United States Policy on Separate Satellite Systems. Beginning in 1983, several U.S. companies, including PanAmSat, lobbied the FCC for permission to establish non-INTELSAT international telecommunications satellite systems. The Communications Satellite Act made only a passing reference to competing satellite systems, authorizing the President to explore the possibility of "a separate communications satellite system" where "required to meet unique governmental needs" or where "otherwise required in the national interest." 47 U.S.C. § 721(a)(6). In 1984, President Reagan, acting pursuant to §§ 701(d) and 721(a) of the Act, issued Presidential Determination No. 85-2, declaring separate international communications satellite systems to be "in the national interest" and directing the Secretary of State and the Secretary of Commerce to "inform the Federal Communications Commission of criteria necessary to ensure [that] the United States" fulfill its obligation to consult with the appropriate INTELSAT bodies regarding competing satellite systems. 49 Fed. Reg. 46,987 (1984). The Departments of State and Commerce jointly prescribed that each alternative system "be restricted to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks" and that "one or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party under Article XIV(d) of the INTELSTAT [Definitive] Agreement to ensure technical compatibility and to avoid significant economic harm." Letter from Secretary of State George P. Schultz and Secretary of Commerce Malcolm Baldridge to Chairman Mark S. Fowler of the Federal Communications Commission (Nov. 28, 1984).

The Foreign Relations Authorization Act (FRAA), Fiscal Years 1986 and 1987, Pub. L. No. 99-93, 99 Stat. 405, 425-26

(1985), ratified the procedures set forth in the Definitive Agreement and in the subsequent Executive Branch directives on competing satellite systems. Expanding on section 721(a)(6) of the Communications Satellite Act, the FRAA declared the policy of the United States to make available, in addition to satellite services utilizing INTELSAT facilities, "any additional such facilities . . . found to be in the national interest" and that also met the dual requirements of technical feasibility and avoidance of economic harm set forth in Article XIV(d) of the Definitive Agreement. *Id.* at § 146(a)(2). The FRAA also made compliance with the requirements set forth in Presidential Determination No. 85-2 and the requirement that "one or more foreign authorities have authorized the use of such system consistent with such conditions" a precondition of consultation with INTELSAT. *Id.* at § 146(b)(1), (2).

The FCC subsequently released a report on September 3, 1985, regarding the applications by U.S. companies to build and operate competing satellite systems. *In re Establishment of Satellite Systems Providing International Communications,* FCC Docket No. 84-1299 (July 25, 1985). While generally approving alternative systems, the FCC also conditioned the issuance of licenses on successful Article XIV(d) consultations. Following Article XIV(d) consultations, PanAmSat obtained approval from INTELSAT's Assembly of Parties to provide international satellite services to the United Kingdom, Germany, Ireland, and several Central and South American countries. PanAmSat also received favorable findings from the Board of Governors following Article XIV(c) consultations for the provision of domestic satellite services to the United Kingdom and Chile.[1]

Proceedings before the District Court. PanAmSat's amended complaint sought damages and injunctive relief for alleged violations of Sections 1 and 2 of the Sherman

[1] At the time the appeal was heard but subsequent to the District Court's decision, PanAmSat secured favorable Article XIV(c) and (d) consultations with respect to a number of other countries.

Antitrust Act, 15 U.S.C. §§ 1, 2 (1988), and for tortious interference with PanAmSat's business relations with prospective customers. Each of these counts was founded on the same set of underlying factual allegations. The complaint charged COMSAT, acting in tandem with INTELSAT, with various anticompetitive acts directed at competing satellite systems, such as passing a resolution to boycott competing systems, delaying Article XIV(c) and Article XIV(d) consultations, pricing satellite telecommunications services without regarding to cost, and purchasing excess satellite capacity. In addition, COMSAT was alleged to have entered into anticompetitive cooperative arrangements with particular signatories. For example, the complaint alleged that COMSAT had entered into an agreement with various European signatories to provide "end-to-end" service and to set prices without regard to cost and had formed separate joint ventures with several South American signatories. Finally, PanAmSat charged COMSAT, acting alone, with several anticompetitive acts, such as filing a sham opposition to Reynold V. Anselmo's application to obtain a federal income tax deferral for the development, purchase, and launch of a telecommunications satellite, refusing to do business with PanAmSat, and representing to various potential customers that PanAmSat would be unable timely to obtain adequate satellite capacity or to complete INTELSAT consultations.

The District Court granted COMSAT's motion to dismiss without reaching the merits of PanAmSat's antitrust claims, relying primarily on the grant of immunity in paragraph 16 of the Headquarters Agreement. The Court construed this immunity to "the representatives of the Parties" "from suit and legal process relating to acts performed by them in their official capacity and falling within their functions" to apply to Signatories, such as COMSAT. In addition, Judge Keenan concluded that the antitrust consistency clause in the Communications Satellite Act of 1962 did not apply to actions taken by COMSAT as Signatory to INTELSAT but required only

those activities undertaken as a common carrier to conform with the antitrust laws. Implicit in the District Judge's opinion is the view that the complaint alleges actions by COMSAT only in its capacity as signatory to INTELSAT and not in its capacity as a common carrier. In the alternative, Judge Keenan ordered dismissal under Fed. R. Civ. P. 12(b) (7) for failure to join INTELSAT, its member-nations, and their signatories as necessary and indispensable parties under Fed. R. Civ. P. 19. Implicit in this ruling too is the view that the allegations against COMSAT concern actions by COMSAT only in its role as signatory to INTELSAT. Finally, the Court dismissed PanAmSat's pendent state law claim for interference with prospective advantage for failing to identify, as required by New York law, the prospective contractual relationship or relationships that would have been consummated *but for* COMSAT's allegedly wrongful interference.

Discussion

Appellants challenge the District Court's interpretation of paragraph 16 of the Headquarters Agreement. That paragraph confers immunity from suit and legal process upon a class defined to include "[t]he officers and employees of INTELSAT, the representatives of the Parties and of the Signatories and persons participating in arbitration proceedings pursuant to the INTELSAT Agreement." Members of the class enjoy immunity from suit "relating to acts performed by them in their official capacity and falling within their functions." The issue is whether the phrase "representatives of the Parties" includes signatories.

Appellants point out that if the paragraph had been intended to cover signatories, a more straightforward phrasing of the immune class would have been "the Parties, the Signatories, and their representatives." Moreover, appellants continue, language in paragraphs preceding and following paragraph 16 arguably applies only to natural persons, reenforcing the argument that

paragraph 16 applies to the individuals who act as representatives of either parties or signatories, but not to the entities themselves. Though these contentions have some force, we think other considerations indicate that the District Court's interpretation was correct.

The Headquarters Agreement implements the Definitive Agreement. The Definitive Agreement requires each party to grant appropriate immunities "to INTELSAT . . . to Parties and representatives of Parties, *to Signatories* and representatives of Signatories." Definitive Agreement Art. XV(c) (emphasis added). Though this phrasing arguably distinguishes between "representatives of Parties" and "Signatories," its primary significance lies in its explicit direction to immunize "Signatories." It is true that the Definitive Agreement directs extension of immunity "to the extent and in the cases to be provided for in the Headquarters Agreement," thereby leaving the scope of immunity to the subsequent document, but that qualification does not suggest that the Headquarters Agreement should be understood to exclude signatories entirely from the category receiving whatever degree of immunity is to be conferred. Indeed, one strong reason for reading the Headquarters Agreement to include signatories in its grant of immunity is the absence of any indication that the odd arrangement resulting from a contrary interpretation was intended: since the parties themselves will enjoy sovereign immunity, appellant's reading would extend immunity to the parties, to INTELSAT, and to the individual representatives of the parties and the signatories, but not to the signatories themselves, at least not to those signatories, like COMSAT, that are not themselves member nations.

Moreoever, it places no strain on the phrase "representatives of the Parties" to place signatories within that category. COMSAT is "the designated United States representative to" INTELSAT, *see* Executive Order No. 12,046. Though the ultimate issue is what the drafters of the Headquarters Agreement meant, not how others regard COMSAT, it is not insignificant that appellant's

complaint repeatedly characterizes COMSAT as "the United States representative." Complaint ¶¶ 11, 28(a), 28(b), 28(c).

Finally, as Judge Keenan recognized, exposure of COMSAT to antitrust liability *in its role as United States signatory to INTELSAT* is entirely inconsistent with the responsibilities Congress entrusted to COMSAT under the CSA. "Congress could not have intended to require Comsat to participate in Intelsat subject to Executive Branch directives and, at the same time, have intended that Comsat proceed at its own antitrust peril in carrying out that official role." *Alpha Lyracom Space Communications, Inc. v. Communications Satellite Corp.*, 1990-2 Trade Cases ¶¶ 69,188 at 64,583 (S.D.N.Y. Sept. 13, 1990). *Cf. Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U.S. 48, 56-57 (1985) (private parties acting at direction of state officials or agencies are entitled to same "state action" antitrust immunity that applies to those officials or agencies); *Cine 42nd St. Theater Corp. v. Nederlander Organization*, 790 F.2d 1032, 1048 (2d Cir. 1986) (same). COMSAT, as United States signatory to INTELSAT, must participate in the consultations that determine to what extent competing satellite systems will be permitted under Article XIV(d) of the Definitive Agreement. Having created COMSAT to wield monopoly power, along with the other participants in a global satellite system, Congress did not expect that corporation to face antitrust liability in deciding, as a member of INTELSAT, whether and to what extent to permit competition.

We also agree with Judge Keenan that the "antitrust consistency clause" in section 701(c) of the CSA applies only to COMSAT's role (and that of its owners) as common carrier and not to its role as United States representative to INTELSAT. The principal antitrust concern voiced within Congress during the consideration of the CSA, once the fundamental decision was made to create a private corporation with monopoly powers, was that the common carriers participating in ownership of

COMSAT would use their ownership position for private anti-competitive purposes. *See, e.g.*, S. Rep. No. 1584, 87th Cong., 2d Sess. 11 (1962). The focus of the "antitrust consistency clause" is evident from the listing of concerns in section 701(c) in the very sentence that concludes with the clause:

> It is the intent of Congress that all authorized users shall have nondiscriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this chapter be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this chapter and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

There is no hint in this catalogue of concerns that COMSAT's role as participant in INTELSAT must conform to antitrust limitations. Congress was so advised by the Department of Justice. *See Antitrust Problems of the Space Satellite Communication System: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 58 (1962) (testimony of Asst. Atty. Gen. Katzenbach) ("[T]he mere doing of what [COMSAT is] permitted to do under this bill is not itself going to result in an offense against the Sherman Act.").

We disagree with Judge Keenan only in his unstated premise that Alpha Lyracom's complaint alleges only activities by COMSAT in its capacity as United States representatives to INTELSAT, as distinct from its capacity as a common carrier. Though the complaint is directed primarily to actions taken by COMSAT acting as a signatory to INTELSAT, lurking within it are allegations of anticompetitive conduct by COMSAT in its "separate role," as the corporation itself describes it, "as the sole

provider of access to the global satellite system to U.S. communications carriers." Brief for Appellee at 38. We do not fault the District Judge for not undertaking a precise parsing of the complaint in an effort to winnow out the few allegations that arguably concern COMSAT's role as common carrier. That task should be undertaken by the appellants. But we are persuaded that the appellants must be accorded an opportunity to amend their complaint in light of the District Court's proper dismissal of it to the extent that is challenged COMSAT's actions as representative to INTELSAT.

In remanding to afford appellant the opportunity to recast its complaint, we caution against any effort to dress up "Signatory" allegations in the language of "common carrier" allegations. If Alpha Lyracom can allege specific aspects of COMSAT's conduct as common carrier that are actionable under the antitrust laws, it is free to proceed. But the effort will require precise drafting and an avoidance of the scattershot approach evident in the current complaint. In particular, we caution Alpha Lyracom not to assume, as it appears to do in some of its argument, that an allegation against COMSAT will survive dismissal as long as it is confined to unilateral rather than concerted action. The line to be drawn is not between concerted and unilateral action, since even COMSAT's unilateral action might have been undertaken in its role as signatory to INTELSAT, but between action taken as signatory and action taken as common carrier. If the amended complaint fails to isolate actionable conduct by COMSAT as common carrier, the District Court should not hesitate to dismiss it again.

We need not consider the District Court's alternate ground for dismissal of the antitrust claims -- failure to join indispensable parties under Civil Rule 19, since any allegations that Alpha Lyracom is able to replead challenging COMSAT's conduct in its role as common carrier are unlikely to encounter the indispensable party concerns Judge Keenan noted with respect to the "signatory" allegations.

Similarly, we need not assess the adequacy of appellants' state law claims for tortious interference with business opportunities since all of these allegations concern COMSAT's consultative activity within INTELSAT relating to the authorization of a competing satellite system. Those are plainly "signatory" activities. Appellants may, if so advised, replead state law claims, confined to COMSAT's common carrier role, bearing in mind the strict pleading requirements of state law claims emphasized by the District Court. *See Optivision, Inc. v. Syracuse Shopping Center Associates*, 472 F. Supp. 665, 685 (N.D.N.Y. 1979); *Susskind v. Ipco Hospital Supply Corp.*, 49 A.D.2d 915, 373 N.Y.S.2d 627, 629 (App. Div. 2d Dep't 1975).

Conclusion

Though we affirm the District Court's basic ruling that COMSAT's conduct as a signatory to INTELSAT is immune from antitrust challenge, we reverse and remand to afford appellants an opportunity to replead such allegations as they may have concerning COMSAT's role as common carrier.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware corporation, and REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship, *Plaintiffs,* - against - COMMUNICATIONS SATELLITE CORPORATION, *Defendant.*	89 Civ. 5021 (JFK) ***OPINION and ORDER***

APPEARANCES:

For Plaintiffs:

Gray, Plant, Mooty, Mooty & Bennett
Minneapolis, Minnesota
Of Counsel: Daniel R. Shulman, Esq.

Alioto & Alioto
San Fransciso, California
Of Counsel: Joseph M. Alioto, Esq.

Marks & Marks
New York, New York
Of Counsel: David L. Marks, Esq.

For Defendant:

Communications Satellite Corporation
Washington, D.C.
Of Counsel: Willard R. Nichols, Esq.
Warren Y Zeger, Esq.
Keith H. Fagan, Esq.

Howrey & Simon
Washington, D.C.
Of Counsel: A. Duncan Whitaker, Esq.
Alan M. Wiseman, Esq.
Mark D. Wegener, Esq.
Jerrold J. Ganzfried, Esq.

Davis, Markel & Edwards
New York, New York
Of Counsel: Thomas J. Sweeney, III, Esq.

JOHN F. KEENAN, United States District Judge

JOHN F. KEENAN, United States District Judge:

Plaintiff filed this antitrust suit under sections 1 and 2 of the Sherman Antitrust Act, 15 U.S.C. §§ 1, 2 (1982 & Supp. 1990) seeking injunctive relief and treble damages pursuant to sections 4 and 16 of the Clayton Antitrust Act, 15 U.S.C. §§ 15, 26. Defendant has moved to dismiss the complaint for lack of subject matter jurisdiction, failure to state a claim, and failure to join a necessary and indispensable party. Fed. R. Civ. P. 12(b)(1), (6), (7). For the reasons discussed below, the Court grants the motion and dismisses the complaint.

FACTS

Reynold Anselmo is a Connecticut citizen doing business as Alpha Lyracom, a sole proprietorship, which in turn does business as Pan American Satellite ("PAS"). Alpha Lyracom owns and operates the first international commercial communications satellite outside the International Telecommunications Satellite Organization ("Intelsat"). Alpha Lyracom provides its services through a space telecommunications satellite called PAS I, which was launched in 1988.

Intelsat consists of 117 nations and their official representatives. Its origins are in a 1961 U.N. resolution calling for international cooperation in developing a global communications system. *See* G.A. Res. 1721, 1 U.N. GAOR Supp. (No. 17) at 6, U.N. Doc. A/5100 (1962). The resolution voiced the common objective of the United Nations' member-nations that "communication by means of satellite should be available to the nations of the world . . . on a global and non-discriminatory basis." *Id.* at 7.

To facilitate the United States' participation in the contemplated global system, Congress enacted the Communications Satellite Act of 1962, 47 U.S.C. §§ 701 *et seq.* ("CSA"). The CSA created a private corporation, defendant Communications Satellite Corp. ("Comsat"), and designated it as the United States representative or signatory to Intelsat. Pursuant to that designation, Comsat is subject to extensive Presidential supervision "to assure that [Comsat's relations with foreign governments and international organizations] shall be consistent with the national interest and foreign policy of the United States." 47 U.S.C. § 721(a)(4).

In addition, Congress sought to ensure that:

> all authorized users shall have nondiscriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this chapter be so organized and operated as to maintain and strengthen competition

> in the provision of communications services to the public; and that the activities of the corporation created under this chapter and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

Id. § 701(c).

The United States, through the vehicle of Comsat, joined Intelsat in 1964. Today Intelsat owns and operates a global system of communications satellites that provides international telecommunications services to more than 170 countries, territories and dependencies, and domestic telecommunications services to over thirty countries. International agreements prescribe the functions and authority of Intelsat, as well as the relations among the United States Government, Intelsat and the other member-nations.[1]

A. *The Intelsat Agreements*

In 1971, the member-nations executed two pacts known as the Definitive Agreement and the Operating Agreement. The Definitive Agreement was executed by the Goverment of each member-nation, the Operating Agreement was executed by the signatory or representative of each member-nation. Comsat signed the Operating Agreement as the United States signatory.

The Preamble to the Definitive Agreement expresses the commitment of each member-nation to "the aim of achieving a single global commercial telecommunications satellite system as part of an improved global telecommunications network . . . which will contribute to world peace and understanding." The Definitive

---

[1] International Executive agreements to which the United States is a party, such as the Intelsat Agreements, constitute the law of the United States, *Weinberger v. Rossi*, 456 U.S. 25, 31 (1982); *Dames & Moore v. Regan*, 453 U.S. 654, 677 (1981), and are subject to the same rules of construction applicable to treaties. *United States v. Pink*, 315 U.S. 203, 223-24, 227-30 (1942); *United States v. Belmont*, 301 U.S. 324, 330-32 (1937).

Agreement entrusts the carrying out of this goal to Intelsat. Art. II(a).

In 1976 the United States, as host country, also entered into the Headquarters Agreement with Intelsat ("HQ Agreement").

1. *Intelsat's Organizational Structure*

a. *Assembly of Parties*

The Definitive Agreement provides that Intelsat's Assembly of Parties shall consist of all member-nations, including the United States. The Assembly of Parties convenes every two years to consider aspects of Intelsat that bear upon the nations as sovereigns. It is also charged with establishing the long-term objectives of Intelsat. Pursuant to Article XIV(d) of the Definitive Agreement, any member-nation wishing to establish or use a non-Intelsat international satellite system (such as plaintiff's) must first consult with the Assembly of Parties, which must declare that the system will not be antithetical to Intelsat's objectives in order for the system to be approved.

b. *Meeting of Signatories*

Under the Definitive Agreement, the designated representatives of each member-nation meet annually. The majority of member-nations other than the United States have designated a government agency or the government itself as its representatives. Each representative has one vote at the meetings. A majority of representatives must be present to constitute a quorum. Decisions on substantive matters, when made on other than a consensus basis, require an affirmative vote of two-thirds of the voting representatives.

c. *Board of Governors*

The Board of Governors, presently composed of 29 persons representing 103 signatories, is responsible for the day-to-day conduct of Intelsat. The Chief Executive of Intelsat is the Director General, who is responsible to the

Board for the performance of all managerial functions.

2. *Intelsat's Functions and Procedures*

While Intelsat was created by its member-nations to establish a single global satellite communications system, procedures were also provided in the event any member-nation wished to establish separate, non-Intelsat, international or domestic satellite communications services. These procedures, known as the consultation process set forth in article XIV of the Definitive Agreement, must be followed by the member-nations to ensure that any separate system is compatible with Intelsat and its international mission.

The consultation procedures distinguish between separate satellite systems for domestic and for international public communications services in terms of both the governing body responsible for consultation and the applicable standards that must be satisfied. Proposals for domestic systems (Art. XIV(c)) are intitiated by the nation in which service will be utilized and are subject to review only for technical compatibility with the Intelsat system. That review is performed by the Board of Governors, and findings are made in the form of recommendations.

On the other hand, when a separate system is proposed by a nation to meet its international communications services requirements (Art. XIV(d)), the final assessment of both the technical compatibility and economic impact of the proposed system on Intelsat must be made *by the Assembly of Parties.* Since international systems implicate the foreign relations and foreign policies of Intelsat's member-nations, it is those member-nations, sitting as the Assembly of Parties, which have the responsibility and authority for concluding the consultation process and for issuing, by a two-thirds majority, the requisite findings.

The Definitive Agreement directs that rates for use of Intelsat satellites must be uniform and, in the aggregate cover the costs of operating the system. Rates are

established by the Board, not individual signatories such as Comsat.

3. *Immunities*

Article XV of the Definitive Agreement requires that each member-nation grant appropriate privileges, exemptions and immunities to Intelsat, to the member-nations (Parties) and their representatives, and to the Signatories and representatives of Signatories, relating to their conduct in carrying out their functions and duties. Pursuant to that directive, the United States entered into the HQ Agreement with Intelsat in 1976. Paragraph 16 provides that:

> "[t]he officers and employees of Intelsat, representatives of the Parties and of the Signatories . . . shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions . . . ."

The International Organizations Immunities Act, 22 U.S.C. §§ 288 *et seq.* (1982 and Supp. V 1987) ("IOIA") confers immunity from suit every form of judicial process on international organizations designated by the President. Intelsat, since its inception, has been designated by the President of the United States as an international organization entitled to the immunities provided in the IOIA, with the current designation set forth in Executive Order No. 11,966, signed by President Ford in 1977. Executive Order No. 11,966, 3 C.F.R. 90 (1978) (App. H). The IOIA also provides that foreign officers and employees of international organizations such as Intelsat are immune from suit and legal process relating to acts performed in their official capacity. 22 U.S.C. § 288d(b). Further, the IOIA provides that "the archives of international organizations shall be inviolable." 22 U.S.C. § 288a(c).

4. *Executive Branch Control of Comsat as U.S. Signatory to Intelsat*

The Executive Branch exercises considerable control

over Comsat's participation in Intelsat. Exec. Order No. 12,046 dictates that "with respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions . . . in negotiations with foreign governments and international bodies." The instructional process through which the Secretary directs Comsat's participation in Intelsat is formalized in written procedures. The procedures recognize that as U.S. representative to Intelsat, "Comsat exercises . . . an important foreign policy function on behalf of the U.S." Before each Intelsat meeting, Comsat must circulate the agenda of the meeting to State Department officials who are charged with the responsibility of issuing instructions to Comsat on how to approach the agenda.

5. *Development of U.S. Policy on Separate, non Intelsat Systems*

Although Intelsat has inarguably functioned as the preeminent global satellite system for member-nations, in 1983 the FCC received several applications to operate non Intelsat systems from United States companies. The influx of applications occasioned President Reagan to issue Presidential Determination No. 85-2, pursuant to his responsibility to determine whether additional international satellite systems were "required in the national interest" under sections 701(d) and 721(a) of the Communications Satellite Act. The President decided it was in the nation's interest to allow the development of separate systems, but directed the United States to consult with Intelsat before final authorization of any separate system in order to meet the United States' obligations under the Definitive Agreement. The President also instructed the Secretaries of State and Commerce to style criteria for the FCC which would insure that the United States met its international obligations. Two criteria were then prescribed that must be satisfied prior to final FCC authorization to commence a separate system.

First, each new system must be restricted to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks. Second, one or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party under Article XIV(d) of the Definitive Agreement to ensure technical compatibility and to avoid economic harm to Intelsat.

Thus, before the FCC may grant final authorization for a proposed separate system, such as plaintiffs', (1) the applicant must first obtain the authorization of each affected foreign country for the use of the system within that country and enter into Article XIV(d) consultations, and (2) then the United States government must undertake and complete the consultation procedures within Intelsat's Assembly of Parties (*i.e.*, member-nations) as required by Article XIV(d) of the Definitive Agreement.

Congress ratified the President's accommodation of the competing interests of Intelsat and fostering United States companies' entrance into the telecommunications industry in the Foreign Relations Authorization Act, Fiscal Years 1986-87 ("FRAA"), Pub. L. No. 99-93, 99 Stat. 405, 425-2 (1985).

The FCC issued a Report and Order regarding the applications for separate systems on July 25, 1985. *In re Establishment of Satellite Systems Providing International Communications,* FCC Docket No. 84-1299 (July 25, 1985) ("Report and Order"). The FCC Report and Order adhered to the separate systems policy articulated by the President and the Secretaries of State and Commerce and ratified by Congress. Thus, while the FCC noted that separate satellite systems would benefit users of international communications services, it concluded that "it [is] necessary to impose the Executive branch restrictions on the authorization of these systems in order to meet our international obligations under the Intelsat Agreement." *Id.* at 5. The FCC Report and Order did not constitute final approval of any particular

separate system. Rather, it expressly stated that the Commission will not issue a final license for the operation of any separate system "until the United States has completed coordination of that system with Intelsat pursuant to Article XIV(d) of the Intelsat Agreement and we have been informed by the Department of State that the United States has fulfilled its obligation under Article XIV(d)." *Id.* at 143. In short, the FCC recognized that United States' support for separate systems must proceed with the Intelsat framework to which the political branches of our government are expressly committed.

6. *Introduction of PAS I*

The FCC preliminarily approved plaintiffs' application in September 1985 to construct and operate a subregional Western Hemisphere satellite system. Following Art. XIV(d) consultations and a favorable resolution by the Assembly of Parties, plaintiffs received final FCC approval in September 1987 to launch its satellite PAS I for communications between the United States and Peru; the satellite was launched in June 1988. In 1988 the Board of Governors, following Art. XIV(c) consultations approved requests by the United Kingdom and Chile for use of plaintiffs' services in domestic communications. In 1988 and 1989, the Assembly of Parties, following Art. XIV(d) consultations, approved plaintiffs' services in international communications in the United Kingdom, Germany, Ireland and several Central and South American countries.

The Complaint

In brief, plaintiffs allege that Comsat, as United States signatory to Intelsat, is responsible for conducting Article XIV(d) consultations on PAS' behalf. Compl. ¶¶ 23. Plaintiff maintains that rather than performing this duty, Comsat has engaged in anticompetitive conduct to thwart plaintiffs' successful entry into the domestic and international telecommunications markets. Paragraphs

27 and 28 of the complaint contain the core allegations of conduct constituting restraint of trade and monopolization in violation of sections 1 and 2 of the Sherman Antitrust Act.

As defendant points out with alacrity, most of the allegations assert that Comsat conspired with Intelsat and its representatives to delay plaintiffs' entry into the market. *See, e.g.*, ¶¶ 28(d),(g),(h),(i),(k-n),(p-r). Plaintiffs do, however, allege substantial unilateral anticompetitive action by Comsat. *See, e.g.*, ¶¶ 28(b),(c),(e),(f),(g),(o),(s),(w),(x-y).

DISCUSSION

A motion to dismiss for failure to state a claim may be granted only if it appears certain that no relief could be granted under any set of facts that could be proved consistent with the allegations. *See Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984); *Lipsky v. Commonweath United Corp.*, 551 F.2d 887, 894 (2d Cir. 1976); *Burger v. Health Ins. Plan of Greater New York*, 684 F. Supp. 46, 49 (S.D.N.Y. 1988). The factual allegations set forth in the complaint of counterclaim must be accepted as true, *see Zinermon v. Burch*, 110 S.Ct. 975, 979 (1990), and the Court must view the allegations in the light most favorable to the pleader. *See Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974); *Yoder v. Orthomolecular Nutrition Inst., Inc.*, 751 F.2d 555, 562 (2d Cir. 1985). Even if it appears on the face of the pleadings that recovery is remote, the claim will withstand the motion to dismiss as long as the pleader retains a possibility of success. *Scheuer*, 416 U.S. at 237. To this landscape must be added the caveat that ""dismissals on the pleadings are especially disfavored in antitrust cases." *Schwartz v. Jamesway Corp.*, 660 F. Supp. 138, 141 (E.D.N.Y. 1987) (citing *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 746 (1976)).

Defendant argues forcefully that it is immune from suit by reason of the IOIA and the Intelsat Agreements. Plaintiffs respond that § 701(c) of the CSA reflects the clear intention of Congress to subject Comsat to the antitrust law. In considering these positions, the Court bears in mind that the antitrust laws must be construed liberally and that antitrust immunity is disfavored. *See National Gerimedical Hosp. v. Blue Cross of Kansas City*, 452 U.S. 378, 388-89 (1981); *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 231 (1979).

In order to allow Intelsat to function outside the unpredictable legal standards of some nations, the United States and the other member-nations accorded Intelsat and its constituent parts immunity from suit. Article XV(c) of the Definitive Agreement directed that a

Headquarters Agreement be executed by the U.S. as host-nation with Intelsat which would grant appropriate immunities. Paragraph 16 of the HQ Agreement provides immunity from suit to Intelsat, *"the representatives of the Parties* and of the Signatories . . . ." (emphasis added). Plaintiffs first seek to circumvent this straightforward grant of immunity to Comsat by embracing a strict interpretation of this language. They argue that they have sued a party and signatory itself, not its representatives. This argument is unpersuasive for two reasons. First, plaintiffs in their complaint acknowledge that Comsat is the representative of the United States Party to Intelsat. Compl. ¶¶ 11, 23. Second, plaintiffs ignore that paragraph 16 of the HQ Agreement implements the directive of Art. XV(c) of the Definitive Agreement to the United States to confer "appropriate privileges and immunities to Intelsat . . . to Parties . . . [and] to Signatories [e.g., Comsat] and representatives of Signatories."

Plaintiff next points out that paragraph 16 of the HQ Agreement states that its grant of immunity "may be waived by . . . the Parties and Signatories for their representatives." They assert that Congress, on behalf of the United States Party, waived Comsat's immunity from the antitrust laws in section 701(c) of the CSA, which provides that the activities of Comsat "shall be consistent with the antitrust laws." Defendant maintains that review of the pertinent legislative history reveals that Congressional concern with potential anticompetitive conduct was confined to the fact that communications common carriers (such at AT&T) would own large amounts of Comsat stock. Because "[r]egard for [the statutory] purposes should infuse construction of the legislation," the Court next parses section 701(c) and its legislative history. *United States v. Dotterweich,* 320 U.S. 277, 280 (1943).

To further the national policy of establishing a global communications network "in conjunction and in cooperation with other countries," 47 U.S.C. § 701(a), Congress

established Comsat as a government-created monopoly and as the official "United States participa[nt] in the global system." 47 U.S.C. § 701(c). Congress created detailed supervision and regulation of Comsat's activities, with particular emphasis on the Executive Branch's responsibility to ensure that Comsat's relationships with foreign governments and international organizations "shall be consistent with the national interest and foreign policy of the United States." U.S.C. § 721(a)(4). Executive Order No. 12,046, 3 C.F.R. 158, § 5-201 (1978) invests the Secretary of State with the responsibility "for instructing [Comsat] in its role" as the United State representative to Intelsat. That Order also directs the Secretary of Commerce to conduct a "continuous review" of the satellite communications system, including Comsat's activities, and to ensure "effective compliance at all times with the" CSA. *Id.* § 2-301(b), (c).

Despite the intricate legal framework and supervision governing Comsat to ensure a course of action consistent with the objectives of Intelsat, plaintiffs seek to expose Comsat to antitrust liability whenever Comsat votes on resolutions at Intelsat meetings, participates in Article XIV consultations as the representative of the United States government or participates in Intelsat pricing or procurement decisions. Those actions, however, are plainly within the Congressional grant of authority to Comsat to "plan, initiate, construct, own, manage, and operate" a communications satellite system "in conjunction with foreign governments or business entities . . . ." 47 U.S.C. § 735(a)(1). Congress could not have intended to require Comsat to participate in Intelsat subject to Executive Branch directives and, at the same time, have intended that Comsat proceed at its own antitrust peril in carrying out that official role.

The legislative history of the CSA confirms that Congress did not intend to subject Comsat to the antitrust laws with respect to its activities as Signatory to Intelsat. Rather, Congress envisioned a far narrower scope for the "antitrust consistency" language in Section 701(c) than

plaintiffs suggest. First, the Senate report confirms that Congress intended to establish, through a global system, a single provider of international satellite services to and from the United States. S. Rep. No. 1584, 87th Cong., 2d Sess. 28 (1962) ("such a system is by nature a Government-created monopoly"); *id.* at 30 ("establishment of a communications satellite system involves the creation of such a monopoly"). There was agreement with the need to create a monopoly to achieve the Act's policy objectives,[2] but significant debate focused on the nature of that monopoly.

While the view prevailed that the sole United States participant in the global system should be a government-created but privately-owned corporation subject to stringent regulation, there were antitrust concerns about whether and to what extent communications common carriers should be permitted to participate in the ownership of the corporation. Congress displayed concern that the newly-created corporation would be dominated by common carriers such as AT&T, and that such ownership would permit them to collude or subvert Comsat for private

---

[2] The legislative history contains many indications that the existence of more than one public satellite system was not contemplated or even regarded as feasible. For example, the Assistant Attorney General, Antitrust Division, testified at the Congressional hearings that,

> for numerous technical reasons we are not going to permit [competing satellite systems], we are going to permit one system and we are going to say who can put it up and under what circumstances; *anyone who later wants to come along and engage in that long-distance communication must use the established facility.*

Communications Satellites: Hearings Before the House Comm. on Interstate and Foreign Commerce, 146 (July 26, 1961) (statement of Lee Loevinger (emphasis added).

Similarly, Nicholas Katzenbach, Assistant Attorney General, Office of Legal Counsel, testified that "the capacity of a single satellite system would be adequate to handle all of the communication possibilities that one can foresee." *Communications Satellites: Hearings Before the House Comm. on Science and Astronautics*, 722 (Aug. 1, 1961).

gain.[3] In particular, there was concern that large common carrier shareholders could control Comsat's procurement of goods and services or access to Comsat's international satellite services to the disadvantage of competing common carriers. In short, Congress' antitrust concerns related to the activities of Comsat and its owners as communications common carriers and not to Comsat's activities as United States representative to the global satellite system subject to Executive Branch regulation.[4]

Seeking to allay Congressional concern, the Department of Justice explained to Congress how it could fashion a plan that would be consistent with the antitrust laws

> "[T]he Department of Justice believes that to be *consistent with the antitrust laws* any plan adopted must meet certain conditions. These conditions are:
>
> (1) All interested communication common carriers be given an opportunity to participate in the ownership of the system;
>
> (2) All interested communication common carriers be given unrestricted use on nondiscriminatory terms of the facilities of the system whether or not they elect to participate in ownership;
>
> (3) All interested parties engaged in the production and sale of communication and related equipment be given an opportunity to participate in ownership of

[3] Section 734(b) (2) of the CSA contains detailed provisions governing the extent to which communications common carriers may own Comsat's shares. Indeed, as originally enacted, this section reserved 50% of Comsat's shares for purchase by communications common carriers. Pub. L. No. 87-624, § 304(b)(2), 76 Stat. 419, 424 (1962), *amended by* Pub. L. No. 97-410, 96 Stat. 2043, 2045 (1983).

[4] The Senate report commented on these specific antitrust concerns. S. Rep. No. 1584, 87th Cong., 2d Sess. 11 (1962) (provisions enacted to "prevent any single interest or group of interests from dominating the activities of the corporation" statute's competitive objectives were to ensure (1) competition in the procurement of equipment and services and (2) non-discriminatory access to international satellite system for communications common carriers); *id.* at 13.

the system; and

(4) All interested parties engaged in the production and sale of communication and related equipment be given unrestricted opportunity to furnish such equipment to the system whether or not they elect to participate in ownership."

Space Satellite Communications: Hearings Before the Subcomm. on Monopoly of the Select Comm. on Small Business, 29 (Aug. 2, 1961) (statement of Lee Loevinger, Assistant Attorney General, Antitrust Division) (emphasis added).

Having been advised by the Justice Department of the safeguards needed to ensure that Comsat and its owners operate in a manner "consistent with the [Federal] antitrust laws," Congress later added that phrase to the statute. Thus, the substance and chronology of the legislative history compel the conclusion dictated by the fundamental objectives of the Act, namely, that Congress did not intend the "antitrust consistency" phrase to authorize private lawsuits against Comsat *in its role as*

the United States representative to Intelsat.

The Court declines to discern a Congressional purpose "'to paralyze with one hand what it sought to promote with the other.'" *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631 (1973) (citation omitted). Section 701(c) applies to Comsat in its capacity as common carrier, not in its role as signatory to Intelsat. Accordingly, paragraph 16 of the HQ Agreement, in conjunction with Art. XV(c) of the Definitive Agreement requires this Court to recognize defendant's immunity from this action.

Because the Court rules that the immunity conferred on defendant under the HQ Agreement bars this suit, it need not reach all of defendant's arguments in favor of dismissal. Two of these arguments, however, warrant discussion.

The Court believes that dismissal is appropriate in the alternative under Fed. R. Civ. P. 12(b)(7) for failure to join necessary and indispensable parties under Rule 19. Rule 19(a) requires joinder of parties whose inclusion will not

---

Congress understood that Comsat would not be subject to an antitrust suit for functioning as the sole United States participant in what was to become the Intelsat global system. When asked by Senator Kefauver whether the government could "bring an antitrust suit against [Comsat] under Section 2 -- monopolization -- of the Sherman Act," the Assistant Attorney General in charge of the Antitrust Division replied that "for purposes of this discussion we should assume that we cannot." *Antitrust Problems of the Space Satellite Communications System: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary* 160 (April 4, 1962). The Department of Justice had also expressly advised Congress that "the mere doing what [Comsat is] permitted to do under this bill is not itself going to result in an offense against the Sherman Act." *Antitrust Problems of the Space Satellite Communication System: Hearings Before The Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary* 58 (March 29, 1962) (testimony of Assistant Attorney General Katzenbach). *See Communications Satellites: Hearings Before the House Comm. on Interstate and Foreign Commerce* 153 (July 26, 1961) (testimony of Assistant Attorney General Loevinger) (where the government "grants an exclusive right to any company to do a particular thing, . . . the exercise of this Government-granted right, is not an antitrust violation . . .")

defeat subject matter jurisdiction "if (1) in [their] absence complete relief cannot be accorded among those already parties, or (2)" their absence will impair their ability to protect their interest in the subject of the case or create a substantial risk of subjecting parties already joined to multiple or inconsistent obligations." Rule 19(a). If such parties exist and are unable to be joined, the Court must "determine whether in equity and good conscience" the action should proceed without the absent parties or be dismissed because the absent parties are indispensable. Rule 19(b).

In making that determination, the Court must consider (1) the prejudicial effect to the joined or absent parties of the indispensable parties' absence; (2) the feasibility of diminishing the prejudicial effect by including "protective provisions" in the judgment; (3) whether the judgment rendered in the case could be adequate; and (4) whether an adequate remedy is available to plaintiff after dismissal. *Id.*

Plainly, Intelsat and its member-nation are "necessary" parties under Rule 19(a). It taxes credulity to suggest that complete relief can be granted as between plaintiffs and Comsat. The lion's share of the complaint's allegations depict concerted action between Comsat and Intelsat's member-nations to restrain trade and monopolize the international telecommunications market. Moreover, as discussed below, the Court could not meaningfully grant plaintiff's request for injunctive relief without the presence of Intelsat and of the governments and their official representatives which purportedly engaged in violations of the antitrust laws.

The United States has one vote in Intelsat's Assembly of Parties and Comsat has but one vote as the United States representative in the Meeting of Signatories. In these bodies as well as the Board of Governors, substantive matters require a two-thirds majority vote. Therefore, for injunctive relief to be effective, the Court would have to enjoin (1) at least two-thirds of the 117 Signatories from committing the kind of acts alleged to have injured PAS

(*e.g.*, certain resolutions); (2) at least two-thirds of the 117 member-nations in the Assembly of Parties from engaging in the kind of conduct alleged to have injured PAS (*e.g.*, denials or delays in Article XIV consultations); and (3) members of Intelsat's Board of Governors representing in the aggregate at least two-thirds of the ownership of Intelsat from engaging in the type of conduct alleged to have injured PAS (*e.g.*, predatory rates and procurement decisions).

Moreover, Comsat has no role in many of the kinds of actions alleged to have injured PAS and to have been undertaken by individual foreign nations or groups of foreign nations. For example, the alleged denials or delays of the necessary operating agreements is a matter solely within the control of those nations in which PanAmSat wishes to send and disseminate satellite signals (*see* Compl. ¶¶ 28(f), (h) and (t); the alleged denials or delays in granting Article XIV(c) consultations for wholly foreign domestic service are matters within the control of the foreign nations concerned (*see* Compl. ¶¶ 28(d)-(f), (h), (j)-(n), (p)-(r), and (t)); and the alleged denials or delays of Article XIV(d) consultations for satellite services between or among two or more foreign nations are matters within the control of those particular foreign nations (*see* Compl. ¶¶ 28(d)-(f), (h), (j)-(n), (p)-(r) and (t)). Thus, for an injunction to be effective in prohibiting these types of alleged unlawful acts, it would need to be directed not only at Comsat, but at those individual foreign nations or groups of nations which have responsibility for the alleged unlawful activities.

Plaintiffs note that they could recover on their claim for money damages without the presence of Intelsat and its member-nations because joint tortfeasors are not indispensable parties. *See Samaha v. Presbyterian Hosp. in City of New York*, 757 F.2d 529, 531 (2d Cir. 1985). While this is correct, it does not surmount the obstacle which prevents this Court from issuing effective injunctive relief: the absence of Intelsat and its member-nations, whose conduct permeates the allegations even under the

most liberal reading of the complaint.[9]

Plaintiff's New York State law claim for interference with prospective advantage must be dismissed for an independent reason. In order to establish a *prima facie* case, plaintiff must plead (1) a prospective contractual relationship with a third party; (2) that would have been consummated (3) but for the defendant's interference by wrongful means or malicious intent (4) without justification. *See Optivision, Inc. v. Syracuse Shopping Center Assoc's,* 472 F. Supp. 665, 685 (N.D.N.Y. 1979).

The "but-for" requirement "is a strict one as it is more stringent than 'being reasonably certain' or 'having a reasonable expectation.'" *Id.* (citations omitted). The motive and justification requirements also are strictly construed. Defendant's motive in interfering must be entirely malicious, without any secondary purpose such as advancing competing economic interests. *See PPX Enters., Inc. v. Audio Fidelity Enters., Inc.,* 818 F.2d 266, 269 (2d Cir. 1987).

Plaintiff alleges in paragraph 30 of the Complaint that but for Comsat's actions, PAS would have sold the entire capacity of PAS I by the time it launched the satellite. This allegation is deficient under New York law because plaintiffs do not specify with whom a prospective contractual relation was lost. Concomitantly, plaintiffs are also unable to satisfy the strict "but for" pleading requirement.

[9] In some cases it may not be necessary to join additional parties with respect to equitable claims because Rule 65(d) permits injunctions to be enforced not only against parties, but also against others "in active concert or participation with them who receive actual notice of the order by personal service or otherwise." *Vuitton et Fils S.A. v. Carousel Handbags,* 592 F.2d 126, 129 (2d Cir. 1979). But Rule 65(d), which may avoid the indispensable party issue in other contexts, is inapplicable here. The alleged co-conspirators who would be essential to the entry of effective injunctive relief -- Intelsat, its member-nations and their representatives -- are immune from process.

CONCLUSION

For the reasons described above, the Court dismisses the complaint. This action is ordered removed from the active docket of this Court.

SO ORDERED.

Dated: New York, New York
September 13, 1990

JOHN F. KEENAN
U.S.D.J.

APPENDIX C

In The
United States District Court
For The Southern District Of New York

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware corporation, and REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship, *Plaintiffs,*	89-CIV-5021 (JFK)
v.	
COMMUNICATIONS SATELLITE CORPORATION, *Defendant.*	***FIRST AMENDED COMPLAINT***
	JURY TRIAL DEMANDED

Alpha Lyracom Space Communications, Inc., and Reynold V. Anselmo, an individual, doing business as Pan American Satellite, a sole proprietorship, plaintiffs above-named, bring this complaint against Communications Satellite Corporation, defendant above-named, for violations of the antitrust laws of the United States and other violations of law, as hereafter alleged, demand trial by jury of all issues properly triable thereby, and complain and allege as follows:

JURISDICTION AND VENUE

1. This is an action for damages and injunctive relief for violations of Sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 2), brought pursuant to Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15, 26), which confer subject matter jurisdiction on this Court, as does 28 U.S.C. § 1337. The non-federal claims alleged herein arise out of a nucleus of operative facts common to that of the federal antitrust claims, and jurisdiction for such non-federal claims exists in this Court under principles of pendent jurisdiction. Further, jurisdiction in this Court exists under 28 U.S.C. § 1332, in that the plaintiffs are citizens of Connecticut and Delaware, the defendant is a citizen of the District of Columbia, and the matter in controversy between the parties exceeds the sum of $50,000, exclusive of interest and costs.

2. Venue exists in this District pursuant to Section 12 of the Clayton Antitrust Act (15 U.S.C. § 22) because the defendant transacts business, has an agent, and/or may be found within the District.

THE PARTIES

3. Reynold V. Anselmo is an individual residing at Greenwich, Connecticut, doing business as Alpha Lyracom, a sole proprietorship, which in turn does business as Pan American Satellite, with its principal place of business at Greenwich, Connecticut. The predecessor in interest of Alpha Lyracom was founded in 1984 to engage in the business of international commercial satellite communications, as described more fully hereafter. Alpha Lyracom is the owner and operator of the international commercial space telecommunications satellite, PAS I, launched June 15, 1988, at a total cost in excess of $100 million. Alpha Lyracom is the first private business in history to own and operate an international commercial communications satellite outside the International Telecommunications Satellite Organization ("Intelsat"), as described hereafter. Alpha Lyracom Space Communications, Inc., is a Delaware corporation having its principal place of business in Greenwich, Connecticut. Alpha Lyracom Space Communications acts as the agent of Alpha Lyracom in the marketing of satellite telecommunications services offered by means of PAS I. Hereafter, this complaint will refer to Alpha Lyracom and Alpha Lyracom Space Communications collectively as the "plaintiff" or "PAS."

4. Defendant Communications Satellite Corporation ("Comsat") is a District of Columbia corporation with its principal place of business in the District of Columbia. It is a publicly held corporation, the shares of which are traded on the New York Stock Exchange. Comsat was incorporated in 1962 pursuant to the Communications Satellite Act of 1962 (47 U.S.C. §§ 701, *et seq.*). Comsat is and has been at all times material herein engaged in the business of developing international satellite systems and marketing international satellite communications services to international and United States markets and customers. For 1988, Comsat had revenues of $358,864,000 and operating income of $80,748,000. PAS and Comsat

are and have been direct competitors in the marketing of satellite communications services as described more fully hereafter.

5. Pursuant to the Communications Satellite Act of 1962, and specifically 47 U.S.C. § 701(c), the activities of Comsat are subject to regulation under and must be consistent with the federal antitrust laws, 15 U.S.C. §§ 1, *et seq.*

NATURE OF TRADE AND COMMERCE

6. The relevant geographic and product market for purposes of this action is international commercial satellite telecommunications services. Commercial satellite telecommunications services relevant for purposes of this action include, *inter alia*, the transmission via satellite of audio, video, and data signals, excluding any service connected to the public switched network (*e.g.*, telephone). The international commercial satellite telecommunications services market includes the following relevant geographic submarkets: (1) the satellite transmission of signals to and from the United States; (2) the satellite transmission of signals domestically and regionally in Central and South America and the Caribbean; and (3) the satellite transmission of signals domestically and regionally in Europe.

7. The growth and development of the relevant market began in 1962 with the passage of the Communications Satellite Act of 1962 ("the Act"). Section 101(a) of the Act provided that "Congress declares that it is the policy of the United States to establish, in conjunction and cooperation with other countries, as expeditously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communications needs of the United States and other countries, and which will contribute to world peace and understanding." (47 U.S.C. § 701.)

8. To effectuate the stated policy, Section 102(c) of the Act authorized the creation of Comsat, subject, however, to the dictates of the antitrust laws. Section 102(c) provided that "[i]n order to facilitate this development and to provide the widest possible participation by private enterprise, United States participation in the global system shall be in the form of a private corporation, subject to appropriate governmental regulation. It is the intent of Congress that all authorized users shall have

nondiscriminatory access to the system; that maximum competition be maintained in the provision of communications services to the public; that the corporation created under this Act be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this Act and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws." (47 U.S.C. § 701(c).)

9. In enacting the Act, Congress also intended to permit the future creation of additional satellite systems, such as PAS, if consistent with the national interest. Section 102(d) of the Act provided that "[i]t is not the intent of Congress by this Act . . . to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest."

10. The provision of the Act expressly creating Comsat was Section 301, which stated, "There is hereby authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government." (47 U.S.C. § 731.) The Act authorized Comsat to "(1) plan, initiate, construct, own, manage, and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system; (2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and (3) own and operate satellite terminal stations when licensed by the" Federal Communications Commission ("FCC"). (47 U.S.C. § 735(a).)

11. In 1964, Comsat, as the United States representative, joined with other countries to form an international consortium, Intelsat, to own and operate a global commercial communications satellite system. Intelsat is today organized pursuant to an Agreement dated August 20, 1971 (the "Intelsat Agreement").

12. Pursuant to the Intelsat Agreement, two levels of affiliation with Intelsat have existed. The first level consists of the Intelsat members or parties, which are the countries themselves that belong to Intelsat, among them the United States. The second level consists of the Intelsat signatories to the Operating Agreement. Each signatory is the entity designated by its member country to enter into the operating agreement, participate in the actual ownership and commercial exploitation of Intelsat satellites, and promote the interest and policies of the member country it represents. Comsat is the Intelsat signatory for the United States. Signatories for the other Intelsat member countries are generally post, telephone, and telegraph companies ("PTTs"), most of which are monopolies owned in whole or in part by the member countries. Today, there are 117 member countries in Intelsat, represented by 117 signatories.

13. Ownership of Intelsat is apportioned according to use of Intelsat satellite facilities. Since the formation of Intelsat, Comsat has at all times been the largest single owner. Today, Comsat owns approximately 27 percent of Intelsat and accounts for more than 50 percent of Intelsat satellite traffic. The next largest ownership share in Intelsat is that of the signatory for Great Britain, approximately 13 percent. No other signatory possesses a share in excess of 10 percent. Together Comsat and the signatories for Great Britain, France, West Germany, Italy, and Spain own and control approximately 50 percent or more of Intelsat.

14. The present 27 percent ownership share of Intelsat held by Comsat is none of its lowest historical ownership shares. Comsat itself performed most of Intelsat's operational and managment functions until 1979, when Intelsat management and operation was taken over by an independent paid staff, headed by a director general, deputy director general, and other executives. Intelsat was run from and occupied the same business premises as, or business premises adjacent to, those of Comsat until 1985, when Intelsat relocated to other offices in the

District of Columbia. At all times, the influence and control of Comsat over the affairs and operations of Intelsat have remained strong and substantial. Comsat has secured the appointment and selection of top Intelsat officials and executives, susceptible to direction from Comsat. Because of its ownership share, influence, and control, Comsat has at all times been able to cause Intelsat to adopt policies and procedures beneficial to Comsat and detrimental to its competitors, including PAS.

15. Competition in international satellite services involving Intelsat member countries, to the extent it exists, has been regulated by Article XIV(d) of the Intelsat Agreement, which provides: "To the extent any Party or Signatory or person within the jurisdiction of a Party intends individually or jointly to establish, acquire or utilize space segment facilities separate from the Intelsat space segment facilities to meet its international public telecommunications services requirements, such Party or Signatory, prior to the establishment, acquisition, or utilization of such facilities, shall furnish all relevant information to and shall consult with the Assembly of Parties, through the Board of Governors, to ensure technical compatibility of such facilities and their operation with the use of radio frequency spectrum and orbital space by the existing or planned Intelsat space segment and to avoid significant economic harm to the global system of Intelsat." Article XIV(c) provides for a technical consultation for domestic satellite activities by signatories. These consultations will be referred to hereafter as Article XIV(d) and Article XIV(c) consultations.

16. In 1965, Intelsat launched its first telecommunications satellite. As of July, 1989, the Intelsat system consisted of 13 operational satellites in geosynchronous orbit linking 172 countries, territories, and dependencies around the globe via 1,738 full-time earth station to earth station pathways (exclusive of transponder leases) among 767 earth station antennas for a variety of voice, video,

data, and audio services. As of 1988, more than half of all international telephone calls and virtually all transoceanic television was carried by the Intelsat system. International financial networks, multi-national corporations, international news services, and radio and television broadcasters have been among the telecommunications users that rely on the Intelsat system for day-to-day global communications. In 1987 full-time international traffic carried on the Intelsat system reached a level of more than 100,000 derived channels. This total represents double the number carried over the Intelsat system at year-end 1981, and an almost 700-fold increase over the 150 channels carried at year-end 1965, the first year in which Intelsat had an operational satellite. Intelsat is now planning the launch of five additional satellites in the Intelsat VI series and five additional satellites in the Intelsat VII series, as well as at least one special purpose satellite intended to foreclose competition from PAS, as set forth more fully hereafter. These satellites are scheduled for future launch.

17. On May 31, 1984, PAS submitted an application to the FCC to be permitted to operate an international space satellite telecommuncations system in competition with Comsat and Intelsat, with primary emphasis on service to Central and South America, where Comsat and Intelsat were providing relatively minimal service. On November 28, 1984, the President of the United States signed a Presidential Determination (PD No. 85-2) that alternative satellite systems, such as PAS, in competition with Comsat and Intelsat, were "required in the national interest" within the meaning of Sections 102(d) and 201(a) of the Communications Satellite Act. The Presidential Determination further stated that the United States should consult with Intelsat regarding such systems "as are authorized by the Federal Communications Commssion." On the same date, at the direction of the President, the United States Department of State and the United States Department of Commerce jointly informed the FCC of the President's decision and the criteria

necessary to ensure United States fulfillment of its international obligations as well as furtherance of its telecommunications and foreign policy interests. On February 8, 1985, the Department of State and the Department of Commerce jointly submitted a paper to the FCC stating the policy grounds for the Presidential Determination and reviewing related issues. The paper, entitled, "A White Paper On New International Satellite Systems" (the "White Paper"), was completed by the Senior Interagency Group on International Communication and Information Policy.

18. The White Paper reviewed current United States telecommunications policies and international obligations to determine whether and under what conditions authorizing satellite systems and services in addition to the Intelsat system would be: (1) consistent with prevailing law, practice, and international treaty obligations; (2) compatible with sound foreign policy and telecommunications policy goals; and (3) in the United States national interest. The White Paper generally concluded that: "It is technically feasible, economically desireable, and in the national interest to allow new entry by U.S. firms into the international satellite field. Customers should be afforded both the new service options and the benefits of competition among customized service providers that new entry promises. This can be accomplished, moreover, while maintaining the technical integrity of the Intelsat global system and avoiding significant economic harm to that system. U.S. foreign policy, and international communications and information policy, require a continued strong national commitment to Intelsat as 'a single global commercial telecommunications satellite system as part of an improved global telecommunications network.' But our national commitment to Intelsat and other important goals can be accommodated, provided that new international satellite systems and services are authorized and regulated along the lines discussed in this report."

19. On September 3, 1985, the FCC issued a Report and

Order regarding the establishment of satellite systems that would provide international communications services and Memoranda Opinions, Orders and Authorizations of applications filed by a number of applicants, including the application filed by PAS on May 31, 1984. The PAS system as originally proposed consisted of one operational satellite and one spare. Twelve of the satellite's 36 transponders were to be used for international traffic between North and South America. The remaining 24 were to be used for domestic service in South America. The 12 international transponders were to have 72 MHz of usable band width per transponder and were to be used to provide links between New York, Miami, the South American continent, and parts of Central America, the Caribbean, and the Iberian Peninsula. The system was to up-link at 6.4-6.9 and down-link at 10.7-11.2 GHz. The satellite was to be designed to provide video and audio distribution services, specifically, distribution of television and radio programs from entities such as television networks, motion picture studios, cable systems, and news and wire services. PAS proposed in its original application to offer its transponder capacity on a non-common carrier basis for sale or long-term lease to both United States and foreign customers. The FCC approved this application, conditioned upon completion of the Intelsat Article XIV(d) consultation process. Thereafter, PAS sought and obtained FCC approval for a modified proposal involving a hybrid satellite consisting of both Ku-band and C-band frequencies. The hybrid satellite had 18 C-band transponders configured for international, regional, and domestic services throughout the Caribbean region and Latin America. Five of these transponders were earmarked for international service between the United States and points in the Caribbean and Latin America; the other 13 were for domestic and regional use in the Caribbean and Latin America. The hybrid satellite also had six Ku-band transponders to be used for international service between the United States and Europe, and for domestic and regional service within

Europe, and for domestic and regional service within Europe. This hybrid satellite was ultimately launched as PAS 1.

20. In its Report and Order of September 3, 1985, the FCC found "that the authorization of these separate satellite systems [including that of PAS] according to the Executive Branch restrictions will be in the public interest." According to the FCC, "We find that the separate satellite systems will provide substantial benefits to the users of international communications services without causing significant economic harm to Intelsat. We also find it necessary to impose the Executive Branch restrictions on the authorization of these systems in order to meet our international obligations under the Intelsat agreement. As to the scope and applicability of the Executive Branch restrictions, we find that: (1) no communications provided over the separate systems may interconnect with the public-switched network either directly or indirectly; (2) there will be no minimum unit of capacity; (3) there will be a one year minimum lease period; (4) separate systems operators are not to operate as common carriers; (5) the "non-interconnect" restrictions and one year long-term lease requirement will apply to all levels of users of separate facilities; (6) common carriers and enhanced service providers may resell separate satellite capacity consistent with the restrictions; and (7) the use of separate systems by United States carriers would require authorization under Section 214 of the Communications Act of 1934. . . . In addition, we conclude that the entry of these systems in a limited area of the international market will not cause significant harm to Intelsat. Intelsat will remain the exclusive provider of satellite facilities for public-switched message services and already has a start in providing the services [with] which the separate satellite systems would compete. Intelsat may lose a small part of its business in this market to entrants, but we conclude that growing demand for satellite services will more than compensate for a smaller market share." September 3, 1985 Report and Order, in the Matter of Establishment of Satellite Systems

Providing International Communications, CC Docket No. 84-1299, ¶¶ 5. Finally, the FCC required the separate satellite systems, including PAS, to engage in Article XIV(c) and Article XIV(d) consultations with Intelsat member countries as a precondition to obtaining final FCC approval. At all times up to final FCC approval of alternate satellite systems, Comsat overtly and vigorously opposed such systems. Thereafter, as set forth more fully hereinbelow, Comsat continued its opposition, largely through covert action and anticompetitive conduct.

21. As of 1985, Intelsat did not provide high-power coverage in Ku-band or C-band frequencies to South America for any services. PAS proposed such coverage, which would be significant in the reduction or elimination of the need for landline or microwave facilities, and in achieving significantly lower earth station size and costs. The FCC found that PAS "clearly will provide a grade of service comparable to a typical domestic satellite system, and there is no question that, given the costs of earth stations necessary for Intelsat services, the savings in those costs can be great enough to reduce substantially overall system costs by the use of the Panamsat satellites." September 3, 1985, Report and Order, ¶¶ 77.

22. As indicated, in May of 1984, the FCC had accepted the application of PAS for authorization to construct, launch, and operate an international satellite system independent of Intelsat. In June of 1985, during the pendency of its application to the FCC, PAS signed a launch agreement with Arianespace for launch of the PAS I communications satellite. In September 1985, the FCC granted conditional authorization to PAS to construct and launch an international satellite system. Also in September 1985, PAS signed a contract with RCA Astro Electronics to construct the PAS I satellite. In September 1987, PAS received final authority from the FCC to construct, launch, and operate the PAS I satellite. In December 1987, the completed PAS I spacecraft arrived in Kourou, French Guiana, to prepare for launch. On June 15, 1988, PAS I was launched, and became the first

independent international communications satellite in history. At the time PAS I was launched, its estimated life was approximately 12 years. Every satellite has a finite life, dependent on the amount of fuel carried and the rate at which fuel is consumed in keeping the satellite at its assigned orbital position. For this reason, time has been of the essence to PAS in obtaining Intelsat and other approvals so as to make PAS I commercially operational and economically viable. Correspondingly, any delay has had and will continue to have an extremely adverse impact on PAS. At present, PAS is engaged in efforts for the planning and launch of a second telecommunications space satellite, PAS II.

23. From the commencement of its efforts to establish a commercial telecommunications satellite system, and continuously through the present, PAS has engaged in (1) negotiations with actual and prospective customers and users of PAS I, (2) negotiations with Intelsat signatories and/or members from which PAS must secure Article XIV(c) and Article XIV(d) consultations at Intelsat, and (3) negotiations with Intelsat signatories for agreements to allow for commercial operations involving the receipt and dissemination of the PAS I signal within the host country. Among the customers that have entered into agreements for use of PAS I are cable television networks CNN and ESPN. To provide effective service to its customers and to operate profitably and successfully, however, PAS must secure Article XIV(c) and Article XIV(d) Intelsat consultations for all countries in which PAS wishes to operate, as well as operating agreements permitting the entry and dissemination of the PAS I signal in all such countries. As the United States signatory to Intelsat, Comsat is and has been responsible for facilitating, coordinating, and conducting Article XIV(c) and Article XIV(d) consultations on behalf of PAS, and for implementing and effectuating the United States policy that separate competing satellite systems are required in the national interest.

24. During the time period covered by this complaint:

(a) Comsat has marketed and sold international commercial satellite telecommunication services in a continuous and uninterrupted flow of interstate commerce throughout the United States.

(b) Comsat has made extensive use of instrumentalities of interstate and foreign commerce in the marketing and sale of international commercial satellite telecommunications services, and in engaging in the violations of law hereafter set forth.

25. Any restraint upon free competition in the marketing of international commercial satellite telecommunications services necessarily and directly restrains and affects interstate commerce in and among the states.

CO-CONSPIRATORS

26. PAS is informed and believes that other persons, as well as persons whose true indentities and natures are at this time unknown to PAS, have engaged with Comsat in the violations of law alleged hereafter as co-conspirators. The acts and statements of such co-conspirators are the acts and statements of the conspiracy, and they are thereby liable therefor. PAS may amend this complaint to add said co-conspirators, as well as currently unknown co-conspirators when and if they become known.

CONDUCT GIVING RISE TO VIOLATIONS OF LAW

27. Commencing at least as early as 1962, at a time and place unknown to PAS, and continuing without interruption through the present, Comsat has monopolized, attempted to monopolize, and/or conspired to monopolize with others, including but not limited to other Intelsat signatories, the commercial satellite transmission of telecommunications signals to and from the United States; and, in furtherance of the foregoing monopolization, attempt to monopolize, and conspiracy to monopolize, Comsat has conspired to monopolize with others, including but not limited to other Intelsat signatories, the commercial satellite transmission of telecommunications signals domestically and regionally in the Caribbean region and Central and South America, and the commercial satellite transmission of telecommunications signals domestically and regionally in Europe. The foregoing conduct by Comsat has also constituted a combination, contract, and conspiracy with others, including but not limited to other Intelsat signatories, unreasonably to restrain trade in the relevant market and its geographic submarkets. Pursuant to the Communications Satellite Act of 1962, Comsat was initially able to obtain its monopoly of international satellite transmission of telecommunication signals to and from the United States. Comsat has, however, willfully and unlawfully maintained, exercised, and abused its monopoly power to prevent and eliminate actual and potential competition, and to set prices and exclude competition, including PAS, in the manner and by the means described hereafter. This conduct of Comsat has had both as its necessary tendency and as its intended purpose and effect the direct suppression of competition in the relevant market and geographic submarkets.

28. The origins, overt acts, and development of the monopolization, attempt to monopolize, and conspiracy to monopolize and unreasonably to restrain trade in the

relevant market and geographic submarkets, known at this time to PAS, include the following course of conduct, all of which has been undertaken by Comsat in furtherance of its purpose and plan to prevent and eliminate actual and potential competition:

(a) The Communications Satellite Act of 1962, as of the time of its enactment, enabled Comsat to obtain a monopoly in the international satellite transmission of telecommunications signals to and from the United States, by empowering Comsat to be the United States representative and signatory to Intelsat and the exclusive marketer in the United States of satellite telecommunications services for the Intelsat satellite system. Although the President in 1984 and the FCC in 1985 authorized the creation and operation of additional international satellite systems in competition with Intelsat, Comsat has maintained its monopoly by excluding and preventing the effective competition of such other satellite systems, including PAS, by the specific conduct described hereafter.

(b) Comsat has failed and refused to implement, promote, and effectuate the policy of the United States Government, as articulated by the President and the FCC, that alternative satellite systems are required in the national interest, and has thereby failed and refused to carry out its statutorily mandated responsibilities as the United States representative and signatory to Intelsat.

(c) Comsat has abused and misused its monopoly and its position as the United States representative and signatory to Intelsat by acting affirmatively to prevent, hinder, and interfere with the establishment and effective competition of alternative satellite systems, including PAS.

(d) On information and belief, in April of 1984, Comsat instigated, voted for, participated in, and caused to be adopted a resolution by Intelsat signatories "to refrain from entering into any

arrangements which may lead to the establishment and subsequent use of" competing alternative satellite systems "to carry traffic to or from their respective countries." This was an express agreement to boycott competing systems, including PAS. On at least two subsequent occasions Comsat joined with Intelsat signatories to ratify and reaffirm the boycott resolution. Further, the resolution formally adopted and joined in by Comsat at Intelsat merely reflects a larger understanding, agreement, and conspiracy existing outside of and independent from Intelsat, in which Comsat and other Intelsat signatories have combined, conspired, and agreed to boycott and refuse to do business with competing satellite systems, including PAS, by refusing Article XIV(c) and Article XIV(d) consultations and operating agreements. This conspiracy, as reflected in the Intelsat resolution, implemented and effectuated by Comsat, has been in effect continuously from 1984 through the present, and Comsat and the other co-conspirators have acted in accordance therewith.

(e) Comsat has delayed, impeded, and failed to implement and conduct in good faith Article XIV(c) and Article XIV(d) Intelsat consulations on behalf of PAS.

(f) Comsat has disparaged and unfairly competed with PAS by representing to actual and potential customers of PAS that PAS would be unable to obtain operating agreements and/or Article XIV(c) and Article XIV(d) Intelsat consultations necessary for PAS to transmit its signals to foreign countries. At the time of making such representations, Comsat had the power to delay and frustrate the efforts of PAS to obtain consultations and operating agreements, and was in fact exercising that power.

(g) Comsat has priced, has caused and instigated Intelsat to price, and has agreed, combined, and conspired with other Intelsat signatories to cause and instigate Intelsat to price satellite telecommuni-

cations services either without regard to cost, below average variable cost, or at a predatory level having the purpose and intended effect of discouraging and excluding competition from alternative satellite systems, including PAS. In particular, Comsat has engaged in such predatory pricing activities with regard to domestic service for the Caribbean region and Central and South America, with regard to "preemptible" video services, and with regard to international business data services to and from the United States.

(h) Comsat has caused and instigated Intelsat, and has agreed, combined, and conspired with other Intelsat signatories to refuse to deal with PAS and to instigate and cause Intelsat, to acquire satellite capacity with the purpose and effect of preventing the acquisition of additional satellite capacity by alternative satellite systems, including PAS, and with the intent to resell such capacity at prices set with the predatory purpose and effect of excluding competition, either by pricing said capacity without regard to cost, below average variable cost, or at a level intended to discourage new entry. In December of 1988 and January of 1989, Comsat entered into such a combination and conspiracy with France Telecom, Societa-Telespazio of Italy, British Telecom International, the Federal Ministry for Post and Telecommunication for West Germany (Bundesposte), and Compania Telefonica Nacional De Espana. At that time, PAS I offered the only available Ku-band transponder capacity between the United States and Europe; the Intelsat system had no more available competing capacity; and PAS was in an excellent position to offer customers Ku-band service to and from Europe. Pursuant to this combination and conspiracy, Comsat and the other conspirators have agreed to delay and refuse Article XIV(c) and Article XIV(d) Intelsat consultations and/or operating agreements for PAS, while at the same time jointly

seeking Ku-band satellite capacity for themselves, to be used to preclude competition from PAS. In furtherance of this combination and conspiracy, in May-June of 1989, Comsat instigated and caused Intelsat to resolve to purchase the "K-4" satellite from General Electric American Communications, for the purpose of preventing and interfering with the sale of Ku-band capacity by PAS, as well as the acquisition and use by PAS of a second satellite, and with the further purpose and intent of adding South American capacity to the satellite, which Ku-band capacity for both Europe and South America will then be sold at predatory prices and used to prevent PAS from obtaining customers, operating agreements, and Article XIV(c) and Article XIV(d) Intelsat consultations with regard to European and South American markets.

(i) As part of the combination and conspiracy with the European signatories described in the foregoing paragraph, Comsat and the other conspirators have agreed to market and sell "end-to-end" service, pursuant to which any customer dealing with Comsat will be assured of landing rights and dissemination of its signal in the United Kingdom, France, Germany, Italy, and Spain. The conspirators are currently offering this service to customers under the name Atlantic Television Service ("ATV"). ATV, for which Comsat acts as network manager, offers "discounted rates, flexible volume-based contracts, one-stop booking for space segment, [and] connectivity to and from Europe, Central and South America, and Africa." This package of end-to-end service will have the purpose and effect of placing PAS at a competitive disadvantage, inasmuch as Comsat and the other conspirators have agreed, pursuant to the boycott entered into in 1984, to refuse to deal with PAS, to deny, delay, and interfere with Article XIV(c) and Article XIV(d) Intelsat consultations for PAS, and to create other hindrances and impediments to

transmission of telecommunications signals by PAS from the United States to Europe.

(j) Comsat has hindered and interfered with the efforts of PAS to do business in Chile. On learning that PAS had successfully contracted with customers in Chile for telecommunications services, and that PAS had successfully completed the Article XIV(c) Intelsat consultation and begun efforts to obtain the Article XIV(d) Intelsat consultation, Comsat entered into a combination and conspiracy with the Chilean Intelsat signatory, Entel, to form a joint venture known as "Satel" for the construction of earth stations in Chile, to be funded principally by Comsat, with the purpose and effect of discouraging and preventing customers from doing business with PAS.

(k) Comsat has hindered and interfered with the efforts of PAS to do business in Argentina. Pursuant to the combination and conspiracy to boycott PAS described above, Comsat and the signatory for Argentina have delayed the Article XIV(c) and Article XIV(d) Intelsat consultations for PAS with respect to Argentina for approximately four years. In April of 1989, on learning that PAS had made progress towards obtaining consultations, Comsat entered into a combination and conspiracy with the Argentine signatory, Entel Argentina, to provide satellite capacity and ultimately to create a joint venture with the purpose and effect of discouraging and preventing customers from doing business with PAS.

(l) Comsat has hindered and interefered with the efforts of PAS to do business in Ecuador. Pursuant to the combination and conspiracy to boycott PAS described hereinabove, PAS has been unable to obtain Article XIV(c) and Article XIV(d) Intelsat consultations with regard to Ecuador. Ecuador is also a member of ASETA, a telecommunications organization formed by Educador, Colombia, Venezuela, Bolivia, and Peru. ASETA plans ultimately to launch its own telecommunications

satellite. In the interim, ASETA has a need for satellite telecommunications services, and was involved in negotiations with PAS for the purchase of capacity on PAS I. On learning of these negotiations, Comsat caused Intelsat to hinder and interfere with PAS, by, on information and belief, offering satellite capacity to ASETA at prices substantially below the prices offered by PAS, at a level either set without regard to cost, below average variable cost, or knowingly calculated to discourage and exclude competition. ASETA, including Ecuador, thereupon terminated negotiations with PAS.

(m) Comsat has hindered and interfered with the efforts of PAS to do business in Venezuela. In addition to the conduct with regard to ASETA described above, the combination and conspiracy to boycott PAS previously described has prevented PAS from obtaining Article XIV(c) and Article XIV(d) consultations. On learning that PAS had successfully contracted with customers in Venezuela, Comsat in April of 1989 approached the Venezuelan signatory to Intelsat, C.A.N.T.V., for the purpose of establishing a joint venture similar to that in Chile, for the purpose of discouraging and preventing customers from doing business with PAS.

(n) Comsat has hindered and interefered with the efforts of PAS to do business in Colombia. In addition to the actions involving ASETA described above, the combination and conspiracy to boycott PAS has prevented PAS from obtaining Article XIV(c) and Article XIV(d) Intelsat consultations for Colombia. On learning of successful efforts by PAS to enlist customers for satellite transmission of business data, Comsat commenced efforts to offer competing service in an effort to exclude PAS from the market.

(o) Comsat has hindered and interefered with the efforts of PAS to do business in Honduras. With regard to Honduras, the United States Department of Defense has sought bidders for a contract for the

satellite transmission of telecommunications signals to Honduras. PAS has attempted to participate in this procurement as a subcontractor. Obtaining business from the United States government will constitute a significant breakthrough for PAS in that PAS will show itself to be a qualified supplier, with the prospect of obtaining substantial additional follow-on business. Comsat has interfered with the efforts of PAS to participate in the Honduras contract by representing to the Department of Defense that PAS would be unable to obtain Article XIV(d) Intelsat consultations for Honduras in a timely manner.

(p) On information and belief, Comsat has hindered and interfered with the efforts of PAS to do business in Switzerland, Austria, the Netherlands, Belgium, Denmark, and Norway. Pursuant to the combination and conspiracy to boycott PAS described hereinabove, PAS has been unable to obtain Article XIV(c) and Article XIV(d) Intelsat consultations for these countries, although PAS has provided evidence of customer demand for PAS service to certain of these countries.

(q) Comsat has hindered and interfered with the efforts of PAS to do business in Spain. By reason of the combination and conspiracy to boycott PAS described hereinabove, PAS has been unable to obtain Article XIV(c) and Article XIV(d) Intelsat consultations for Spain. The Intelsat signatory for Spain is further part of the combination and conspiracy of Comsat and certain European nations to provide bloc end-to-end ATV service to Europe, and to acquire the K-4 satellite, as described hereinabove.

(r) Comsat has hindered and interfered with the efforts of PAS to do business in Italy. Pursuant to the combination and conspiracy to boycott PAS described above, PAS has been unable to obtain Article XIV(c) and Article XIV(d) Intelsat consultations for Italy. Further, the Italian Intelsat signatory is part of the combination and conspiracy of Intelsat and certain

European signatories to offer bloc end-to-end ATV service to Europe and to acquire the K-4 satellite, as described hereinabove.

(s) Comsat has hindered and interefered with the efforts of PAS to obtain a United States government contract for the satellite transmission of telecommunications to Latin America under a United States government program known as Worldnet. Comsat has hindered the efforts of PAS to participate in the Worldnet contract by representing that PAS has not obtained the requisite Intelsat consultations, will not obtain such consultations, and, if PAS ever does obtain such consultations, will be unable to do so in a manner sufficiently timely to permit performance of the Worldnet contract.

(t) In other countries of the world, where PAS has been able to obtain Intelsat consultations, such as Great Britain, France, West Germany, and Brazil, the combination and conspiracy to boycott PAS described above has resulted in delays of three to four years in obtaining such Intelstat consultations, and in the case of France a consultation allowing for reception of only one-way television signals, and has also prevented PAS from obtaining a final commercial operating agreement in any of these countries, and has thereby delayed and hindered the entry of PAS to such markets.

(u) At the FCC, Comsat has filed a sham opposition to an application of Reynold V. Anselmo to obtain a federal income tax deferral with respect to the development, purchase, and launch of PAS I. Comsat has filed and persisted in its opposition knowing that is has no standing to challenge the application, and that its opposition is without merit. Comsat has further filed and persisted in its opposition for the purpose of causing delay, increased expense, and financial hardship to PAS, and not for the purpose of good faith petitioning of the FCC.

(v) Comsat has refused to do business with PAS.

Although Comsat lacks sufficient satellite capacity to provide adequate service to its customers in certain markets, and although PAS has offered satellite capacity on PAS I to Comsat on reasonable and competitive terms and conditions, Comsat has refused to deal with PAS in order to preserve and protect Comsat's monopoly, and to prevent and exclude competition from PAS.

(w) To preserve and protect its monopoly position and to exclude and prevent competition from PAS, Comsat has induced Intelsat to alter and shift, or to plan to alter and shift, satellite transmission for existing customers in order to obtain transponder capacity to be used in soliciting prospective customers of PAS, including the United States government, CNN, ESPN, and TVN, a Chilean television network, for the purpose of depriving PAS of business opportunities.

(x) Comsat has secured and obtained the appointment at Intelsat of top Intelsat executives and members of the Board of Governors. Through and in combination with these and other top Intelsat executives Comsat has implemented and effectuated the foregoing course of anticompetitive conduct. These persons have included, *inter alia,* former Director General Richard Colino; former Deputy Director General for Business Planning and External Relations Jose L. Alegrett; Director of Strategic Planning Robert Kinzie; General Manager of Service Development Andrea Maleter; Director of Human Resources Mrs. Robert Kinzie; Director of Operations Frank Burkitt; Director of Engineering Jack Dicks; and Vice Chairman of the Board of Governors Bruce Crockett. Messrs. Colino and Alegrett have been convicted of felonies perpetrated during their tenure at Intelsat, and have been incarcerated in United States federal correctional institutions.

(y) Comsat's activities have hindered and interfered with the efforts of PAS to finance, develop,

and launch additional satellites, which will both facilitate the marketing of services offered by PAS I and provide backup, supplementation, and ultimately replacement of existing satellites. Comsat has further represented to actual and prospective customers of PAS that PAS does not have and cannot and will not obtain additional satellite capacity and/or obtain needed clearances to operate.

29. The conduct, activities, and actions of Comsat described above were undertaken at all times maliciously, knowingly, willfully, and in conscious disregard of the legal rights and actual and prospective relations of PAS.

EFFECTS OF CONDUCT AND INJURY TO PLAINTIFF

30. As a direct and proximate result of the conduct of Comsat described above, PAS has sustained damage and injury to its business and property in that: (1) PAS has lost revenue and profits that it otherwise would have obtained in the absence of Comsat's conduct; (2) PAS has incurred expenses it would otherwise not have incurred in the absence of Comsat's conduct; (3) PAS has been unable to raise capital it would otherwise have been able to raise in the absence of Comsat's conduct; (4) PAS has been prevented from recovering its capital costs, which it would have recovered in the absence of Comsat's conduct; (5) PAS has been hindered and prevented from securing additional satellites; and (6) the capital value of PAS has been damaged and impaired in that the lost revenues and profits PAS has sustained as a direct result of Comsat's actions have caused PAS to have an enterprise value less than it otherwise would have had in the absence of Comsat's conduct. The investment of PAS in the PAS I satellite and the overall business of PAS has been in excess of $100 million. In the absence of the conduct of Comsat described above, if Comsat had instead fully and faithfully performed its obligations to promote United States interests in fostering the development of satellite systems alternative to Intelsat, PAS would have fully sold out the capacity of PAS I either before or shortly after the time of launch of PAS I, would have entirely recovered its capital investment, and would have operated at a substantial profit from and after the launch of PAS I. At this time, the exact amount of damages sustained by PAS as a result of the conduct of Comsat described above has not been calculated, but PAS reasonably believes its damages to be substantially in excess of $500 million.

31. As a direct and proximate result of the conduct of Comsat described above, the public at large has been injured in that competition has been monopolized and restrained in the relevant market and the geographic

submarkets thereof, so as to deprive the consuming public of the opportunity to purchase the best possible services at the lowest possible prices established by supply and demand in a freely competitive market.

VIOLATIONS OF LAW ALLEGED
SHERMAN ACT SECTION 2

32. The conduct of Comsat described hereinabove constitutes monopolization of the market for international commercial satellite telecommunications services, including the transmission of audio, video, and data signals to and from the United States; and further constitutes an attempt to monopolize said market, with a dangerous probability of success, as well as a conspiracy to monopolize said market; and further constitutes an attempt and conspiracy to monopolize international commercial satellite telecommunications services, including the transmission via satellite of audio, video, and data signals domestically and regionally in Central and South America, and domestically and regionally in Europe; all of which conduct is in violation of Section 2 of the Sherman Antitrust Act (15 U.S.C. § 2), by reason of which violations PAS has been injured in its business and property and is entitled to recover three-fold such actual damages as the jury finds PAS to have sustained, injunctive relief, and PAS' cost of suit, including a reasonable attorney's fee, pursuant to Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15, 26).

SHERMAN ACT SECTION 1

33. The conduct of Comsat described hereinabove constitutes a contract, combination, and conspiracy to boycott PAS and refuse, collectively, to deal with PAS, in per se violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1), and, further, constitutes a contract, combination, and conspiracy that restrains trade and commerce unreasonably in the relevant market and the geographic submarkets thereof under the rule of reason, by reason of which violations PAS is entitled to recover three-fold such actual damages as the jury may find PAS to have sustained, injunctive relief, and PAS' cost of suit, including a reasonable attorney's fee, pursuant to Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15, 26).

INFERFERENCE WITH PROSPECTIVE ADVANTAGE

34. The conduct of Comsat described hereinabove constitutes intereference with the prospective advantage of PAS in violation of the common law of the States of New York and Connecticut, in that Comsat, without privilege or justification, willfully and knowingly interfered with and prevented the prospective advantage of PAS in marketing and selling international commercial satellite telecommunications services, and thereby caused damage and injury to the business and property of PAS, by reason of which violation of law PAS is entitled to recover such actual damages as the jury may find PAS to have sustained, punitive or exemplary damages in an amount at least equal to or an appropriate multiple of its actual damages, injunctive relief, and PAS' cost of suit herein.

PRAYER FOR RELIEF

WHEREFORE, PAS prays for relief as follows:

(a) that the jury find and this Court adjudge and decree that Comsat has engaged in the violations of law alleged hereinabove;

(b) that PAS recover such actual damages as the jury shall find PAS to have sustained, in an amount of at least $500 million, together with such punitive or exemplary damages as the law shall permit or the jury shall find in an appropriate multiple of the actual damages of PAS;

(c) that the Court treble all actual damages recovered by PAS on its federal antitrust claims to an amount of at least $1.5 billion, as required by Section 4 of the Clayton Antitrust Act (15 U.S.C. § 15);

(d) that the Court issue a permanent injunction enjoining and prohibiting Comsat from engaging in the violations of law set forth hereinabove;

(e) that PAS recover its cost of suit herein, including a reasonable attorney's fee as provided by Sections 4 and 16 of the Clayton Antitrust Act (15 U.S.C. §§ 15, 26), and the common law of the States of New York and Connecticut; and

(f) that PAS have such other and further relief as this Court shall deem just and appropriate.

Dated: November 17, 1989.

MARKS & MARKS
ALIOTO & ALIOTO
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

Daniel R. Shulman

Gray, Plant, Mooty,
Mooty & Bennett, P.A.
3400 City Center
33 South Sixth Street
Minneapolis, Minnesota 55402
Telephone (612) 343-2800

David L. Marks, Esq.
Marks and Marks
551 Fifth Avenue
New York, New York 10176
Telephone (212) 682-6211

Joseph M. Alioto, Esq.
Alioto and Alioto
Twenty-third Floor
650 California Street
San Francisco, California 94108
Telephone (415) 434-2100

Attorneys for Plaintiffs

JURY DEMAND

PAS hereby demands trial by jury of all issues properly triable thereby.

Dated: November 17, 1989.

MARKS & MARKS
ALIOTO & ALIOTO
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

_____

Daniel R. Shulman

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 1989, I caused the foregoing First Amended Complaint to be served upon counsel listed below via Federal Express:

A. Duncan Whitaker
Howrey & Simon
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20067

Thomas J. Sweeney, III
Davis, Markel & Edwards
100 Park Avenue
New York, New York 10017

Daniel R. Shulman

Sherman Antitrust Act, §§ 1, 2, 26 Stat. 209, as amended, 15 U.S.C. §§ 1, 2, (1988)

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch 647, § 1, 26 Stat. 209; Aug. 17, 1937, ch 690, Title VIII, § 1, 50 Stat. 693; July 7, 1955, ch 281, 69 Stat. 282; Dec. 21, 1974, P. L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, P. L. 94-145, § 2, 89 Stat. 801.)

§ 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch 647, § 2, 26 Stat. 209; July 7, 1955, ch 281, 69 Stat. 282; Dec. 21, 1974, P. L. 93-528, § 3, 88 Stat. 1708.)

Communications Satellite Act of 1982,
47 U.S.C. §§ 701 et seq. (1962)
and Supp. V. (1987)

SUBCHAPTER I-GENERAL PROVISIONS

§ 701. Congressional declaration of policy and purpose

(a) Policy

The Congress declares that it is the policy of the United States to establish, in conjunction and in cooperation with other countries, as expeditiously as practicable a commercial communications satellite system, as part of an improved global communications network, which will be responsive to public needs and national objectives, which will serve the communication needs of the United States and other countries, and which will contribute to world peace and understanding.

(b) Availability of telecommunication services

The new and expanded telecommunication services are to be made available as promptly as possible and are to be extended to provide global coverage at the earliest practicable date. In effectuating this program, care and attention will be directed toward providing such services to economically less developed countries and areas as well as those more highly developed, toward efficient and economical use of the electromagnetic frequency spectrum, and toward the reflection of the benefits of this new technology in both quality of services and charges for such services.

(c) Private enterprise; access; competition

In order to facilitate this development and to provide for the widest possible participation by private enterprise, United States participation in the global system shall be in the form of a private corporation, subject to appropriate governmental regulation. It is the intent of Congress that all

authorized users shall have nondiscriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this chapter be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this chapter and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

(d) Domestic use; additional systems

It is not the intent of Congress by this chapter to preclude the use of the communications satellite system for domestic communication services where consistent with the provisions of this chapter nor to preclude the creation of additional communications satellite systems, if required to meet unique governmental needs or if otherwise required in the national interest.

(Pub.L. 87-624, Title I, § 102, Aug. 31, 1962,76 Stat. 419.)

§ 702. Definitions

As used in this chapter, and unless the context otherwise requires--

(1) the term "communications satellite system" refers to a system of communications satellites in space whose purpose is to relay telecommunication information between satellite terminal stations, together with such associated equipment and facilities for tracking, guidance, control, and command functions as are not part of the generalized launching, tracking, control, and command facilities for all space purposes;

(2) the term "satellite terminal station" refers to a complex of communication equipment located on the earth's surface, operationally connected with one or more terrestrial communication systems, and capable of transmitting telecommunications to or receiving telecommunications from a communications satellite system.[1]

(3) the term "communications satellite" means an earth satellite which is intentionally used to relay telecommunication information;

(4) the term "associated equipment and facilities" refers to facilities other than satellite terminal stations and communications satellites, to be constructed and operated for the primary purpose of a communications satellite system, whether for administration and management, for research and development, or for direct support of space operations;

(5) the term "research and development" refers to the conception, design, and first creation of experimental or prototype operational devices for the operation of a communications satellite system, including the assembly of separate components into a working whole, as distinguished from the term "production," which relates to the construction of such devices to fixed specifications compatible with repetitive duplication for operational applications; and[2]

(6) the term "telecommunication" means any transmission, emission or reception of signs, signals, writings, images, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.[1]

---

[1]So in original. The period probably should be a semicolon.
[2]So in original. The word "and" probably should not appear here.

(7) the term "communications common carrier" has the same meaning as the term "common carrier" has when used in the Communications Act of 1934, as amended [47 U.S.C.A. § 151 et seq.], and in addition includes, but only for purposes of sections 733 and 734 of this title, any individual, partnership, association, joint-stock company, trust, corporation, or other entity which owns or controls, directly or indirectly, or is under direct or indirect common control with, any such carrier; and the term "authorized carrier", except as otherwise provided for purposes of section 734 of this title by section 734(b)(1) of this title, means a communications common carrier which has been authorized by the Federal Communications Commission under the Communications Act of 1934, as amended, to provide services by means of communications satellites;

(8) the term "corporation" means the corporation authorized by subchapter III of this chapter.[1]

(9) the term "Administration" means the National Aeronautics and Space Administration; and

(10) the term "Commission" means the Federal Communications Commission.

(Pub.L. 87-624, Title I, § 103, Aug. 31, 1962,76 Stat. 419.)

---

[1]So in original. The period probably should be a semicolon.

SUBCHAPTER II-FEDERAL COORDINATION, PLANNING, AND REGULATION

§ 721. Implementation of policy

In order to achieve the objectives and to carry out the purposes of this chapter-

(a) Executive functions; execution of national program; review; agency coordination; supervision of foreign relationships; foreign participation; use for general governmental purposes; separate systems; compatibility with domestic and foreign facilities

the President shall-

(1) aid in the planning and development and foster the execution of a national program for the establishment and operation, as expeditiously as possible, of a commercial communications satellite system;

(2) provide for continuous review of all phases of the development and operation of such a system, including the activities of a communications satellite corporation authorized under subchapter III of this chapter;

(3) coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, so as to insure that there is full and effective compliance at all times with the policies set forth in this chapter;

(4) exercise such supervision over relationships of the corporation with foreign governments or entities or with international bodies as may be appropriate to

assure that such relationships shall be consistent with the national interest and foreign policy of the United States;

(5) insure that timely arrangements are made under which there can be foreign participation in the establishment and use of a communications satellite system;

(6) take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes except where a separate communications satellite system is required to meet unique governmental needs, or is otherwise required in the national interest; and

(7) so exercise his authority as to help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the system with existing communications facilities both in the United States and abroad.

(b) Administration functions; technical advice to Commission; cooperation in research and development and technical consultation with corporation; assistance and launching, associated services and other services to corporation on reimbursable basis

the National Aeronautics and Space Administration shall-

(1) advise the Commission on technical characteristics of the communications satellite system;

(2) cooperate with the corporation in research and development to the extent deemed appropriate by

the Administration in the public interest;

(3) assist the corporation in the conduct of its research and development program by furnishing to the corporation, when requested, on a reimbursable basis, such satellite launching and associated services as the Administration deems necessary for the most expeditious and economical development of the communications satellite system;

(4) consult with the corporation with respect to the technical characteristics of the communications satellite system;

(5) furnish to the corporation, on request and on a reimbursable basis, satellite launching and associated services required for the establishment, operation, and maintenance of the communications satellite system approved by the Commission; and

(6) to the extent feasible, furnish other services, on a reimbursable basis, to the corporation in connection with the establishment and operation of the system.

(c) Commission functions; competitive bidding; consultation with Small Business Administration; discrimination; just and reasonable charges, classifications, practices, regulations and other terms and conditions; allocation of facilities; establishment of communication to particular foreign point; technical compatibility of system and stations; accounting; rates; technical approval; construction and operation authorizations; financing of corporation; additions; rules and regulations

the Federal Communications Commission, in its administration of the provisions of the Communications Act of 1934, as amended [47 U.S.C.A. § 151 et seq.], and as supplemented by this chapter, shall--

(1) insure effective competition, including the use of competitive bidding where appropriate, in the procurement by the corporation and communications common carriers of apparatus, equipment, and services required for the establishment and operation of the communications satellite system and satellite terminal stations; and the Commission shall consult with the Small Business Administration and solicit its recommendations on measures and procedures which will insure that small business concerns are given an equitable opportunity to share in the procurement program of the corporation for property and services, including but not limited to research, development, construction, maintenance, and repair.[1]

(2) insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges, classifications, practices, regulations, and other terms and conditions and regulate the manner in which available facilities of the system and stations are allocated among such users thereof;

(3) in any case where the Secretary of State, after obtaining the advice of the Administration as to

---

[1]So in original. The period probably should be a semicolon.

technical feasibility, has advised that commercial communication to a particular foreign point by means of the communications satellite system and satellite terminal stations should be established in the national interest, institute forthwith appropriate proceedings under section 214(d) of the Communications Act of 1934, as amended [47 U.S.C.A. § 214(d)], to require the establishment of such communication by the corporation and the appropriate common carrier or carriers;

(4) insure that facilities of the communications satellite system and satellite terminal stations are technically compatible and interconnected operationally with each other and with existing communications facilities;

(5) prescribe such accounting regulations and systems and engage in such ratemaking procedures as will insure that any economies made possible by a communications satellite system are appropriately reflected in rates for public communication services;

(6) approve technical characteristics of the operational communications satellite system to be employed by the corporation and of the satellite terminal stations; and[2]

(7) grant appropriate authorizations for the construction and operation of each satellite terminal station, either to the corporation or to one or more authorized carriers or to the corporation and one or more such carriers jointly,

---

[2]So in original. The word "and" probably should not appear here.

as will best serve the public interest, convenience, and necessity. In determining the public interest, convenience, and necessity the Commission shall authorize the construction and operation of such stations by communications common carriers or the corporation, without preference to either;

(8) authorize the corporation to issue any shares of capital stock, except the initial issue of capital stock referred to in section 734(a) of this title, or to borrow any moneys, or to assume any obligation in respect of the securities of any other person, upon a finding that such issuance, borrowing, or assumption is compatible with the public interest, convenience, and necessity and is necessary or appropriate for or consistent with carrying out the purposes and objectives of this chapter by the corporation;

(9) insure that no substantial additions are made by the corporation or carriers with respect to facilities of the system or satellite terminal stations unless such additions are required by the public interest, convenience, and necessity;

(10) require, in accordance with the procedural requirements of section 214 of the Communications Act of 1934, as amended [47 U.S.C.A. § 214], that additions be made by the corporation or carriers with respect to facilities of the system or satellite terminal stations where such additions would serve the public interest, convenience, and necessity; and

(11) make rules and regulations to carry out the provisions of this chapter.

(Pub.L. 87-624, Title II, § 201, Aug. 31, 1962,76 Stat. 421.)

SUBCHAPTER III - COMMUNICATIONS SATELLITE CORPORATION

§ 731 Creation of corporation; non-Government agency; laws applicable to corporation; reservation of right to amend or repeal chapter

There is authorized to be created a communications satellite corporation for profit which will not be an agency or establishment of the United States Government. The corporation shall be subject to the provisions of this chapter and, to the extent consistent with this chapter, to the District of Columbia Business Corporation Act [D.C.Code, § 29-301 et seq.]. The right to repeal, alter, or amend this chapter at any time is expressly reserved.

(Pub.L. 87-624, Title III, § 301, Aug. 31, 1962, 76 Stat. 423.)

§ 732. Process of organization

The President of the United States shall appoint incorporators, by and with the advice and consent of the Senate, who shall serve as the initial board of directors until the first annual meeting of stockholders or until their successors are elected and qualified. Such incorporators shall arrange for an initial stock offering and take whatever other actions are necessary to establish the corporation, including the filing of articles of incorporation, as approved by the President.

(Pub.L 87-624, Title III, § 302, Aug. 31, 1962,76 Stat. 423.)

§ 733. Directors and officers

(a) Board of directors; qualifications; chairman; appointment by President; term; election by stockholders; percentage of stock ownership determining right to elect; cumulative voting; amendment of articles of incorporation; bylaws for national emergencies

The corporation shall have a board of directors consisting of fifteen individuals who are citizens of the United States, of whom one shall be elected annually by the board to serve as chairman. Three members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate, effective the date on which the other members are elected, and for terms of three years or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the director whom he succeeds. The remaining twelve members of the board shall be elected annually by the stockholders. Six of such members shall be elected by those stockholders who are not communications common carriers, and the remaining six such members shall be elected by the stockholders who are communications common carriers, except that if the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting of stockholders is less than 45 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, the number of members to be elected at such meeting by each group of stockholders shall be determined in accordance with the following table:

When the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or inderectly by communications common carriers is less than--	But not less than--	The number of members which stockholders who are communications common carriers are entitled to elect shall be--	And the number of members which other stockholders are entitled to elect shall be--
45 per centum	40 per centum	5	7
40 per centum	35 per centum	4	8
35 per centum	25 per centum	3	9
25 per centum	15 per centum	2	10
15 per centum	8 per centum	1	11
8 per centum	_____	0	12

No stockholder who is a communications common carrier and no trustee for such a stockholder shall vote, either directly or indirectly, through the votes of subsidiaries or affiliated companies, nominees, or any persons subject to his direction or control, for more than three candidates for membership on the board, except that in the event the number of shares of the voting capital stock of the corporation issued and outstanding and owned either directly or indirectly by communications common carriers as of the record date for the annual meeting is less than 8 per centum of the total number of shares of the voting capital stock of the corporation issued and outstanding, any stockholder who is a communications common carrier shall be entitled to vote at such meeting for candidates for membership on the board in the same manner as all other stockholders. Subject to the

foregoing limitations, the articles of incorporation of the corporation shall provide for cumulative voting under section 27(d) of the District of Columbia Business Corporation Act [D.C.Code, § 29-327(d)]. The articles of incorporation of the corporation may be amended, altered, changed, or repealed by a vote of not less than 662/3 per centum of the outstanding shares of the voting capital stock of the corporation owned by stockholders who are communications common carriers and by stockholders who are not communications common carriers, voting together, if such vote complies with all other requirements of this chapter and of the articles of incorporation of the corporation with respect to the amendment, alteration, change, or repeal of such articles. The corporation may adopt such bylaws as shall, notwithstanding the provisions of section 36 of the District of Columbia Business Corporation Act [D.C.Code, § 29-336], provide for the continued ability of the board to transact business under such circumstances of national emergency as the President of the United States, or the officer designated by him, may determine, after February 18,1969, would not permit a prompt meeting of a majority of the board to transact business.

(b) President of corporation; designation and appointment of other officers; compensation; United States citizenship of officers; dual salary prohibition

The corporation shall have a president, and such other officers as may be named and appointed by the board, at rates of compensation fixed by the board, and serving at the pleasure of the board. No individual other than a citizen of the United States may be an officer of the corporation. No officer of the corporation shall receive any salary from any source other than the corporation during the period of his employment by the corporation.

(Pub.L. 87-624, Title III, § 303, Aug. 31, 1962, 76 Stat. 423;

Pub.L. 91-3, § 1, Mar. 12, 1969,83 Stat. 4.)

§ 734. Financing of corporation

(a) Capital stock; amount of issue; no par value shares; voting rights; dividends; price and public distribution of initial offering; shareholder eligibility

The corporation is authorized to issue and have outstanding, in such amounts as it shall determine, shares of capital stock, without par value, which shall carry voting rights and be eligible for dividends. The shares of such stock initially offered shall be sold at a price not in excess of $100 for each share and in a manner to encourage the widest distribution to the American public. Subject to the provisions of subsections (b) and (d) of this section, shares of stock offered under this subsection may be issued to and held by any person.

(b) "Authorized carrier" defined; shareholder eligibility; voting rights limitation of authorized carriers and other stockholders

(1) For the purposes of this section the term "authorized carrier" shall mean a communications common carrier which is specifically authorized or which is a member of a class of carriers authorized by the Commission to own shares of stock in the corporation upon a finding that such ownership will be consistent with the public interest, convenience, and necessity.

(2) Only those communications common carriers which are authorized carriers shall own shares of stock in the corporation at any Time, and no other communications common carrier shall own shares either directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to its direction or control. At no time after the initial issue is completed shall the aggregate of the shares of voting stock of the corporation owned by authorized carriers directly or indirectly through subsidiaries or affiliated companies, nominees, or any persons subject to their direction or control exceed 50 per centum of such shares issued and outstanding.

(3) At no time shall any stockholder who is not an authorized carrier, or any syndicate or affiliated group of such stockholders, own more than 10 per centum of the shares of voting stock of the corporation issued and outstanding.

(c) Nonvoting security issues and certificates of indebtedness; rate base

The corporation is authorized to issue, in addition to the stock authorized by subsection (a) of this section, nonvoting securities, bonds, debentures, and other certificates of indebtedness as it may determine. Such nonvoting securities, bonds, debentures, or other certificates of indebtedness of the corporation as a communications common carrier may own shall be eligible for inclusion in the rate base of the carrier to the extent allowed by the Commission. The voting stock of the corporation shall not be eligible for inclusion in the rate base of the carrier.

(d) Alien share ownership limitation

Not more than an aggregate of 20 per centum of the shares of stock of the corporation authorized by subsection (a) of this section which are held by holders other than authorized carriers may be held by persons of the classes described in paragraphs (1), (2), (3), (4), and (5) of section 310(a) of this title.

(e) Inspection and copying rights

The requirement of section 45(b) of the District of Columbia Business Corporation Act [D.C.Code, § 29-345(b)] as to the percentage of stock which a stockholder must hold in order to have the rights of inspection and copying set forth in that subsection shall not be applicable in the case of holders of the stock of the corporation, and they may exercise such rights without regard to the percentage of stock they hold.

(f) Transfer and distribution of shares among authorized carriers

Upon application to the Commission by any authorized carrier and after notice and hearing, the Commission may compel any other authorized carrier which owns shares of stock in the corporation to transfer to the applicant, for a fair and reasonable consideration, a number of such shares as the Commission determines will advance the public interest and the purposes of this chapter. In its determination with respect to ownership of shares of stock in the corporation, the Commission, whenever consistent with the public interest, shall promote the widest possible distribution of stock among the authorized carriers.

(Pub.L. 87-624, Title III, § 304, Aug. 31, 1962,76 Stat. 424; Pub.L. 97-410, § 5, Jan. 3, 1983,96 Stat. 2045.)

§ 735. Powers of corporation

(a) Authorized powers

In order to achieve the objectives and to carry out the purposes of this chapter, the corporation is authorized to--

(1) plan, initiate, construct, own, manage, and operate itself or in conjunction with foreign governments or business entities a commercial communications satellite system;

(2) furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities, foreign and domestic; and

(3) own and operate satellite terminal stations when licensed by the Commission under section 721(c)(7) of this title.

(b) Specific corporate activities

Included in the activities authorized to the corporation for accomplishment of the purposes indicated in subsection (a) of this section, are, among others not specifically named-

(1) to conduct or contract for research and development related to its mission;

(2) to acquire the physical facilities, equipment and devices necessary to its operations, including communications satellites and associated equipment and facilities, whether by construction, purchase, or gift;

(3) to purchase satellite launching and related services from the United States Government;

(4) to contract with authorized users, including the United States Government, for the services of the communications satellite system; and

(5) to develop plans for the technical specifications of all elements of the communications satellite system.

(c) Usual powers of stock corporation

To carry out the foregoing purposes, the corporation shall have the usual powers conferred upon a stock corporation by the District of Columbia Business Corporation Act.

(Pub.L. 87-624, Title III, § 305, Aug. 31, 1962, 76 Stat. 425.)

§ 741. Common carrier status of corporation; laws applicable to corporation; common carrier activity; conflict of laws

The corporation shall be deemed to be a common carrier within the meaning of section 3(h) of the Communications Act of 1934, as amended [47 U.S.C.A. § 153(h)], and as such shall be fully subject to the provisions of title II [47 U.S.C.A. § 201 et seq.] and title III, [47 U.S.C.A. § 301 et seq.] of that Act. The provision of satellite terminal station facilities by one communication common carrier to one or more other communications common carriers shall be deemed to be a common carrier activity fully subject to the Communications Act [47 U.S.C.A. § 151 et seq.]. Whenever the application of the provisions of this chapter shall be inconsistent with the application of the provisions of the Communications Act, the provisions of this chapter shall govern.

(Pub.L. 87-624, Title IV, § 401, Aug. 31, 1962,76 Stat. 426.)

§ 742. Foreign business negotiations of corporation; notice to Department of State; advice and assistance from Department of State

Whenever the corporation shall enter into business negotiations with respect to facilities, operations, or services authorized by this chapter with any international or foreign entity, it shall notify the Department of State of the negotiations, and the Department of State shall advise the corporation of relevant foreign policy considerations. Throughout such negotiations the corporation shall keep the Department of State informed with respect to such considerations. The corporation may request the Department of State to assist in the negotiations, and that Department shall render such assistance as may be appropriate.

(Pub.L. 87-624, Title IV, § 402, Aug. 31,1962,76 Stat. 426.)

§ 743. Sanctions

(a) Petition of Attorney General for equitable relief; venue

If the corporation created pursuant to this chapter shall engage in or adhere to any action, practices, or policies inconsistent with the policy and purposes declared in section 701 of this title, or if the corporation or any other person shall violate any provision of this chapter, or shall obstruct or interfere with any activities authorized by this chapter, or shall refuse, fail, or neglect to discharge his duties and responsibilities under this chapter, or shall threaten any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which such corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, upon petition of the Attorney General of the United States, to grant such equitable relief as may be necessary or appropriate to prevent or terminate such conduct or threat.

(b) Punishment, liability or sanction under other provisions

Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this chapter.

(c) Duty of compliance with provisions of chapter and rules and regulations

It shall be the duty of the corporation and all communications common carriers to comply, insofar as applicable, with all provisions of this chapter and all rules and regulations promulgated thereunder.

(Pub.L. 87-624, Title IV, § 403, Aug. 31,1962,76 Stat. 426.)

§ 744. Reports to the Congress

(a) President

The President shall transmit to the Congress in January of each year a report which shall include a comprehensive description of the activities and accomplishments during the preceding calendar year under the national program referred to in section 721(a)(1) of this title, together with an evaluation of such activities and accomplishments in terms of the attainment of the objectives of this chapter and any recommendations for additional legislative or other action which the President may consider necessary or desirable for the attainment of such objectives.

(b) Corporation

The corporation shall transmit to the President and the Congress, annually and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments under this chapter.

(c) Commission

The Commission shall transmit to the Congress, annually and at such other times as it deems desirable, (i) a report of its activities and actions on anticompetitive practices as they apply to the communications satellite programs; (ii) an evaluation of such activities and actions taken by it within the scope of its authority with a view to recommending such additional legislation which the Commission may consider necessary in the public interest; and (iii) an evaluation of the capital structure of the corporation so as to assure the Congress that such structure is consistent with the most efficient and economical operation of the corporation.

(Pub.L. 87-624, Title IV, § 404, Aug. 31,1962,76 Stat. 426.)

International Organizations Immunities Act,
22 U.S.C. §§ 288 35 seq. (1982)
and Supp. V (1987)

SUBCHAPTER XVIII-PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS

§ 288. "International organization" defined; authority of President

For the purposes of this subchapter, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter (including the amendments made by this subchapter) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this subchapter or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this subchapter.

(Dec. 29, 1945, c. 652, Title I, § I, 59 Stat. 669.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NOS. 9721 AND 10103

Ex.Ord. No. 9721, May 10, 1946, 11 F.R. 5209, as amended by Ex.Ord. No. 10103, Feb. 1, 1950, 15 F.R. 597 which provided for the transfer of Federal Government personnel to public international organizations, was revoked with certain savings provisions by section 2 of Ex.Ord. No. 10804, Feb. 12, 1959, 24 F.R. 1147, and subsequently revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 12628

Mar. 8, 1988, 53 F.R. 7725

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1 of the International Organizations Immunities Act (22 U.S.C. 288) [this section], and in order to facilitate United States participation in the United Nations Industrial Development Organization, it is hereby ordered as follows:

Section 1. The United Nations Industrial Development Organization, whose Constitution was ratified by the United States on August 2, 1983, and entered into force on June 21, 1985, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act [this subchapter]. This designation is not intended to abridge in any respect the privileges, exemptions,or immunities that such organization has acquired or may acquire by international agreements or by

Act of congress.

Sec. 2. This Order shall be effective immediately.

Ronald Reagan

§ 288a. Privileges, exemptions, and immunities of international organizations

International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section, as follows:

(a) International organizations shall, to the extent consistent with the instrument creating them, possess the capacity--

(i) to contract;

(ii) to acquire and dispose of real and personal property;

(iii) to institute legal proceedings.

(b) International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

(c) Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable.

(d) Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments.

(Dec. 29, 1945, c. 652, Title I, § 2, 59 Stat. 669.)

§ 288b. Baggage and effects of officers and employees exempted from customs duties and internal revenue taxes

Pursuant to regulations prescribed by the Commissioner of Customs with the approval of the Secretary of the Treasury, the baggage and effects of alien officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation.

(Dec. 29, 1945, c. 652, Title I, § 3, 59 Stat. 669.)

§ 288c. Exemption from property taxes

International organizations shall be exempt from all property taxes imposed by, or under the authority of, any Act of Congress, including such Acts as are applicable solely to the District of Columbia or the Territories.

(Dec. 29, 1945, c. 652, Title I, § 6, 59 Stat. 671.)

§ 288d. Privileges, exemptions, and immunities of officers, employees, and their families; waiver

(a) Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employees residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, and the registration of foreign agents, be entitled to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families.

(b) Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees except insofar as such immunity may be waived by the foreign government or international organization concerned.

(Dec. 29, 1945, c. 652, Title I, § 7(a), (b), 59 Stat. 671.)

§ 288e. Personnel entitled to benefits

(a) Notification to and acceptance by Secretary of State of personnel

No person shall be entitled to the benefits of this subchapter, unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative,

officer, or employee; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, or employee; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, or employees.

(b) Deportation of undesirables

Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this subchapter is not desirable, he shall so inform the foreign government or international organization concerned, as the case may be, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) Extent of diplomatic status

No person shall, by reason of the provisions of this subchapter, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

(Dec. 29, 1945, c. 652, Title I, § 8, 59 Stat. 672.)

§ 288f. Applicability of reciprocity laws

The privileges, exemptions, and immunities of international organizations and of their officers and employees, and members of their families, suites, and servants, provided for in this subchapter, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: Provided, that nothing contained in this subchapter shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities provided in this subchapter from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States.

(Dec. 29, 1945, c. 652, Title I, § 9, 59 Stat. 673.)

§ 288f-1. European Space Agency and Organization of Eastern Caribbean States; extension of privileges, exemptions, and immunities to members

The provisions of this subchapter may be extended to the European Space Agency and to the Organization of Eastern Caribbean States (including any office established in the

United States by that organization) in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.

(Dec. 29, 1945, c. 652, Title I, § 11, as added Feb. 2, 1966, Pub.L. 89-353,80 Stat. 5, and amended Nov. 22, 1983, Pub. L. 98-164, Title I, § 120,97 Stat. 1023; July 6, 1988, Pub.L. 100-362, 102 Stat. 819.)

§ 288f-2. Organization of African Unity; extension of privileges, exemptions, and immunities

The provisions of this subchapter may be extended to the Organization of African Unity and may continue to be extended to the International Labor Organization in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.

(Dec. 29, 1945, c. 652, Title I, § 12, as added Nov. 27, 1973, Pub.L. 93-161, 87 Stat. 635, and amended Aug. 15, 1979, Pub. L. 96-60, Title IV, § 404,93 Stat. 403.)

§ 288f-3. Immunities for International Committee of the Red Cross

The International Committee of the Red Cross, in view of its unique status as an impartial humanitarian body named in the Geneva Conventions of 1949 and assisting in their

implementation, shall be considered to be an international organization for the purposes of this title and may be extended the provisions of this title in the same manner, to the same extent, and subject to the same conditions, as such provisions may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.

(Dec. 29, 1945, c. 652, Title I, § 13, as added Dec. 22, 1987, Pub.L, 100-204, Title VII, § 743, 101 Stat. 1395.)

§ 288g. Organization of American States; extension of privileges and immunities to members

Under such terms and conditions as he shall determine, the President is hereby authorized to extend, or to enter into an agreement extending, to the representatives of member states (other than the United States) to the Organization of American States and to permanent observers to the Organization of American States, and to members of the staffs of said representatives and permanent observers, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic envoys accredited to the United States.

(July 10,1952, c. 628,66 Stat. 516; Nov. 7, 1973, Pub. L. 93-149, § 1(b), 87 Stat. 560.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11931

Aug. 3, 1976, 41 F.R. 32689

EXTENSION OF DIPLOMATIC PRIVILEGES AND IMMUNITIES TO PERMANENT OBSERVERS TO ORGANIZATION OF AMERICAN STATES

By virtue of the authority vested in me by the Act of November 7, 1973 (87 Stat. 560; 22 U.S.C. 288g) [this section], and as President of the United States of America, I extend to Permanent Observers to the Organization of American States, and to the members of the diplomatic staffs of such Permanent Observers, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic envoys accredited to the United States.

This Executive order shall be effective as of November 7, 1973. The enjoyment of privileges and immunities extended hereunder shall be subject to any Agreements entered into between the Government of the United States and the Organization of American States after that date.

Gerald R. Ford

§ 288h. Commission of European Communities; extension of privileges and immunities to members

Under such terms and conditions as he shall determine and consonant with the purposes of this section, the President is authorized to extend, or to enter into an agreement extending, to the Mission to the United States of America of the Commission of the European Communities,

and to members thereof, the same privileges and immunities subject to corresponding conditions and obligations as are enjoyed by diplomatic missions accredited to the United States and by members thereof. Under such terms and conditions as the President may determine, the President is authorized to extend to other offices of the Commission of the European Communities which are established in the United States, and to members thereof--

(1) the privileges and immunities described in the preceding sentence; or

(2) as appropriate for the functioning of a particular office, privileges and immunities, equivalent to those accorded consular premises, consular officers, and consular employees, pursuant to the Vienna Convention on Consular Relations.

(Pub. L. 92-499, Oct. 18, 1972, 86 Stat. 815; Pub.L. 100-204, Title VII, § 741, Dec. 22, 1987, 101 Stat. 1394.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 11689

Dec. 5, 1972, 37 F.R. 25987

PRESIDENTIAL EXTENSION OF DIPLOMATIC PRIVILEGES AND IMMUNITIES

By virtue of the authority vested in me by the Act of October 18, 1972 (Public Law 92-499) [this section], and as President of the United States, I hereby extend to the Mission to the United States of America of the Commission of the European Communities, and to the officers of that Mission assigned to Washington to represent the Commission to the Government of the United States and duly notified to

and accepted by the Secretary of State, and to their families, the same privileges and immunities, subject to corresponding conditions and obligations, as are enjoyed by diplomatic missions accredited to the United States and by members of the diplomatic staffs thereof.

Richard Nixon

EXECUTIVE ORDER NO. 12651

Sept. 9, 1988, 53 F.R. 35287

OFFICES OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and the Act to extend diplomatic privileges and immunities to the Mission to the United States of America of the Commission of the European Communities and the members thereof, 22 U.S.C. Sec. 288h [this section], I hereby extend to the Permanent Observer Mission of the Delegation of the Commission of the European Communities to the United Nations the same privileges and immunities as are accorded to permanent observer missions of states to the United Nations. I also hereby extend to the members of the diplomatic staff of that mission assigned to New York to observe the work of the United Nations and duly notified to the United States Government and the United Nations in that capacity, and to their families, the same privileges and immunities, subject to corresponding conditions and obligations, as are accorded to members of the diplomatic staff of missions accredited to the United Nations.

Pursuant to the same authority, I also hereby extend to the West Coast Office of the Delegation of the Commission of the European Communities and to the officers and employees of that mission assigned to San Francisco to represent the Commission to the Government of the United States and duly notified to and accepted by the Secretary of State, and to their families, the privileges and immunities, subject to corresponding conditions and obligations, substantively equivalent to those accorded consular premises, consular officers, and consular employees pursuant to the Vienna Convention on Consular Relations. For the purpose of extending privileges and immunities to the West Coast Office of the Delegation of the Commission of the European Communities, its official functions shall consist in:

(a) protecting in the United States the interests of the European Communities within the limits permitted by domestic and international law;

(b) furthering the development of commercial, economic, cultural, and scientific relations between the European Communities and the United States and otherwise promoting friendly relations between them;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural, and scientific life of the United States, reporting thereon to the European Communities and giving information to persons interested.

Pursuant to the same authority, I also hereby extend to the members of the administrative and technical staff and members of the service staff of the Delegation of the Commission of the European Communities assigned to Washington to represent the Commission to the Government of the United States and duly notified to and accepted by the Secretary of State, and to their families, the same privileges

and immunities, subject to corresponding conditions and obligations, as are enjoyed by members of the administrative and technical staff and members of the service staff of diplomatic missions accredited to the United States.

This order is not intended to abridge in any respect privileges, exemptions or immunities that the Delegation of the Commission of the European Communities may have acquired or may acquire by international agreements or by Congressional action.

Ronald Reagan

§ 288i. Liaison Office of the People's Republic of China; extension of privileges and immunities to members

Under such terms and conditions as he shall determine and consonant with the purposes of this section, the President is authorized to extend to the Liaison Office of the People's Republic of China in Washington and to the members thereof the same privileges and immunities subject to corresponding conditions and obligations as are enjoyed by diplomatic missions accredited to the United States and by members thereof.

(Pub. L. 93-22, Apr. 20, 1973, 87 Stat. 24.)

Presidential Determination No. 85-2
3 C.F.R. 254 (1985)

Presidential Determination No. 85-2 of November 28, 1984

Memorandum for the Secretary of State, the Secretary of Commerce

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 102(d) and 201(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 701(d), 721(a)), I hereby determine that separate international communications satellite systems are required in the national interest. The United States, in order to meet its obligations under the Agreement Establishing the International Telecommunications Satellite Organization (INTELSAT) (TIAS 7532), shall consult with INTELSAT regarding such separate systems as are authorized by the Federal Communications Commission. You are directed jointly to inform the Federal Communications Commission of criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests.

This determination shall be published in the **Federal Register.**

RONALD REAGAN

THE WHITE HOUSE,
Washington, November 28, 1984.

Agreement Establishing Interim Arrangements for a Global Communications Satellite System, Aug. 20, 1964, 15 U.S.T. 1705

MULTILATERAL

Communications Satellite System

Agreement establishing interim arrangements for a global commercial communications satellite system and special agreement.

Done at Washington August 20, 1964;

Entered into force August 20,1964.

AGREEMENT ESTABLISHING INTERIM ARRANGEMENTS FOR A GLOBAL COMMERCIAL COMMUNICATIONS SATELLITE SYSTEM

The Governments signatory to this Agreement,

Recalling the principle set forth in Resolution No. 1721 (XVI) of the General Assembly of the United Nations that communications by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis;

Desiring to establish a single global commercial communications satellite system as part of an improved global communications network which will provide expanded telecommunications services to all areas of the world and which will contribute to world peace and understanding;

Determined, to this end, to provide, through the most advanced technology available, for the benefit of all nations of the world, the most efficient and economical service possible consistent with the best and most equitable use of the radio spectrum;

Believing that satellite communications should be organized in such a way as to permit all States to have access to the global system and those States so wishing to invest in the system with consequent participation in the design, development, construction (including the provision of equipment), establishment, maintenance, operation and ownership of the system;

Believing that it is desirable to conclude interim arrangements providing for the establishment of a single global commercial communications satellite system at the earliest practicable date, pending the working out of definitive arrangements for the organization of such a system;

Agree as follows:

ARTICLE I

(a) The Parties to this Agreement shall co-operate to provide, in accordance with the principles set forth in the Preamble to this Agreement, for the design, development, construction, establishment, maintenance and operation of the space segment of the global commercial communications satellite system, to include

(i) an experimental and operational phase in which it is proposed to use one or more satellites to be placed in synchronous orbit in 1965;

(ii) succeeding phases employing satellites of types to be determined, with the objective of achieving basic global coverage in the latter part of 1967; and

(iii) such improvements and extensions thereof as the Committee established by Article IV of this Agreement may decide subject to the provisions of Article VI of this Agreement.

(b) In this Agreement,

(i) the term "space segment" comprises the communications satellites and the tracking, control, command and related facilities and equipment required to support the operation of the communications satellites;

(ii) the terms "design" and "development" include research.

ARTICLE II

(a) Each Party either shall sign or shall designate a communications entity, public or private, to sign the Special Agreement which is to be concluded further to this Agreement and which is to be opened for signature at the same time as this Agreement. Relations between any such designated entity and the Party which has designated it shall be governed by the applicable domestic law.

(b) The Parties to this Agreement contemplate that administrations and communications carriers will, subject to the requirements of their applicable domestic law, negotiate and enter directly into such traffic agreements as may be appropriate with respect to their use of channels of communication provided by the system to be established under this Agreement, services to be furnished to the public, facilities, divisions of revenues and related business arrangements.

ARTICLE III

The space segment shall be owned in undivided shares by the signatories to the Special Agreement in proportion to their respective contributions to the costs of the design, development, construction and establishment of the space segment.

ARTICLE IV

(a) An Interim Communications Satellite Committee, hereinafter referred to as "the Committee", is hereby established to give effect to the cooperation provided for by Article I of this Agreement. The Committee shall have

responsibility for the design, development, construction, establishment, maintenance and operation of the space segment of the system and, in particular, shall exercise the functions and have the powers set forth in this Agreement and in the Special Agreement.

(b) The Committee shall be composed as follows: one representative from each of the signatories to the Special Agreement whose quota is not less than 1.5%, and one representative from any two or more signatories to the Special Agreement whose combined quotas total not less than 1.5% and which have agreed to be so represented.

(c) In the performance of its financial functions under this Agreement and under the Special Agreement the Committee shall be assisted by an advisory sub-committee on finance. This sub-committee shall be established by the Committee as soon as the Committee becomes operative.

(d) The Committee may establish such other advisory sub-committees as it thinks fit.

(e) No signatory or group of signatories to the Special Agreement shall be deprived of representation on the Committee because of any reduction pursuant to Article XII (c) of this Agreement.

(f) In this Agreement, the term "quota", in relation to a signatory to the Special Agreement, means the percentage set forth opposite its name in the Annex to the Special Agreement as modified pursuant to this Agreement and the Special Agreement.

ARTICLE V

(a) Each signatory to the Special Agreement or group of signatories to the Special Agreement represented on the

Committee shall have a number of votes equal to its quota, or to their combined quotas, as the case may be.

(b) A quorum for any meeting of the Committee shall consist of representatives having, in total, a number of votes exceeding the vote of the representative with the largest vote by not less than 8.5.

(c) The Committee shall endeavor to act unanimously; however, if it fails to reach agreement it shall take decisions by a majority of the votes cast, except that, with respect to the following matters, and subject to paragraphs (d) and (e) of this Article, any decision must have the concurrence of representatives whose total votes exceed the vote of the representative with the largest vote by not less than 12.5:

(i) choice of type or types of space segment to be established;

(ii) establishment of general standards for approval of earth stations for access to the space segment;

(iii) approval of budgets by major categories;

(iv) adjustment of accounts pursuant to Article 4 (c) of the Special Agreement;

(v) establishment of the rate of charge per unit of satellite utilization pursuant to Article 9 (a) of the Special Agreement;

(vi) decisions on additional contributions pursuant to Article VI (b) of this Agreement;

(vii) approval of the placing of contracts pursuant to Article 10 (c) of the Special Agreement;

(viii) approval of matters relating to satellite launchings pursuant to Article 10 (d) of the Special Agreement;

(ix) approval of quotas pursuant to Article XII (a) (ii) of this Agreement;

(x) determination of financial conditions of accession pursuant to Article XII (b) of this Agreement;

(xi) decisions relating to withdrawal pursuant to Article XI (a) and (b) of this Agreement and Article 4 (d) of the Special Agreement;

(xii) recommendation of amendments pursuant to Article 15 of the Special Agreement;

(xiii) adoption of the rules of procedure of the Committee and the advisory sub-committees;

(xiv) approval of appropriate compensation to the Corporation for its performance of services as manager pursuant to Articles 5 (c) and 9 (b) of the Special Agreement.

(d) If the Committee, upon the expiration of sixty days following the date when such matter has been proposed for decision, shall not have taken a decision pursuant to paragraph (c) (i) of this Article on the type of space segment to be established to achieve the objective stated in paragraph (a) (ii) of Article I of this Agreement, a decision on such matter may thereafter be taken by the concurring votes of representatives whose total votes exceed the vote of the representative with the largest vote by not less than 8.5.

(e) If the Committee, upon the expiration of sixty days following the date when such matter has been proposed for decision, shall not have approved

(i) any particular budget category pursuant to paragraph (c) (iii) of this Article,

(ii) the placing of any particular contract, pursuant to paragraph (c) (vii) of this Article, or

(iii) any particular matter relating to satellite launchings, pursuant to paragraph (c) (viii) of this Article,

relating to achievement of the objectives stated in paragraphs (a) (i) and (a) (ii) of Article I of this Agreement, a decision on such matter may thereafter be taken by the concurring votes of representatives whose total votes exceed the vote of the representative with the largest vote by not less than 8.5.

ARTICLE VI

(a) The contributions of the signatories to the Special Agreement towards the costs of the design, development, construction and establishment of the space segment during the interim arrangements shall be based upon an estimate of U.S. $200,000,000 for such costs. Each signatory to the Special Agreement shall pay its quota of such costs in accordance with the provisions of the Special Agreement.

(b) The Committee shall determine whether contributions are required during the interim arrangements in excess of the U.S. $200,000,000 estimate and, if so, in what amounts. If the additional contributions required during the interim arrangements were to result in total contributions exceeding U.S. $300,000,000, a special conference of the signatories to the Special Agreement shall

be convened to consider the matter and recommend appropriate action before decisions are taken by the Committee. The conference shall determine its own procedure.

(c) Each signatory to the Special Agreement may assume the obligation to pay all or part of its quota of any such additional contributions, but no signatory to the Special Agreement shall be required to do so. To the extent that such obligation is not assumed by any signatory to the Special Agreement, it may be assumed by the remaining signatories to the Special Agreement in the proportion that their respective quotas bear to each other or as they may otherwise agree. However, if a signatory to the Special Agreement, which is a member of a group of signatories formed in order to appoint jointly a representative on the Committee pursuant to Article IV (b) of this Agreement, does not assume the obligation to pay such additional contributions, the remaining signatories of that group may assume that obligation in whole or in part to the extent that these remaining signatories may agree. The quotas of the signatories to the Special Agreement shall be adjusted accordingly.

ARTICLE VII

In order to ensure the most effective utilization of the space segment in accordance with the principles set forth in the Preamble to this Agreement, no earth station shall be permitted to utilize the a space segment unless it has been approved by the Committee pursuant to Article 7 of the Special Agreement.

ARTICLE VIII

The Communications Satellite Corporation, incorporated under the laws of the District of Columbia, herein referred to

as "the Corporation", shall, pursuant to general policies of the Committee and in accordance with specific determinations which may be made by the Committee, act as the manager in the design, development, construction, establishment, operation and maintenance of the space segment.

ARTICLE IX

(a) Having regard to the program outlined in Article I of this Agreement, within one year after the initial global system becomes operational and in any case not later than 1st January 1969, the Committee shall render a report to each Party to this Agreement containing the Committee's recommendations concerning the definitive arrangements for an international global system which shall supersede the interim arrangements established by this Agreement. This report, which shall be fully representative of all shades of opinion, shall consider, among other things, whether the interim arrangements should be continued on a permanent basis or whether a permanent international organization with a General Conference and an international administrative and technical staff should be established.

(b) Regardless of the form of the definitive arrangements,

(i) their aims shall be consonant with the principles set forth in the Preamble to this Agreement;

(ii) they shall, like this Agreement, be open to all States members of the International Telecommunication Union or their designated entities;

(iii) they shall safeguard the investment made by signatories to the Special Agreement; and

(iv) they shall be such that all parties to the definitive arrangements may have an opportunity of contributing to the determination of general policy.

(c) The report of the Committee shall be considered at an international conference, at which duly designated communications entities may also participate, to be convened by the Government of the United States of America for that purpose within three months following submission of the report. The Parties to this Agreement shall seek to ensure that the definitive arrangements will be established at the earliest practicable date, with a view to their entry into force by 1st January 1970.

ARTICLE X

In considering contracts and in exercising their other responsibilities, the Committee and the Corporation as manager shall be guided by the need to design, develop and procure the best equipment and services at the best price for the most efficient conduct and operation of the space segment. When proposals or tenders are determined to be comparable in terms of quality, c.i.f. price and timely performance, the Committee and the Corporation as manager shall also seek to ensure that contracts are so distributed that equipment is designed, developed and procured in the States whose Governments are Parties to this Agreement in approximate proportion to the respective quotas of their corresponding signatories to the Special Agreement; provided that such design, development and procurement are not contrary to the joint interests of the Parties to this Agreement and the signatories to the Special Agreement. The Committee and the Corporation as manager shall also seek to ensure that the foregoing principles are applied with respect to major sub-contracts to the extent that this can be accomplished without impairing the responsibility of the

prime contractor for the performance of work under the contract.

ARTICLE XI

(a) Any Party may withdraw from this Agreement, and this Agreement shall cease to be in force for that Party three months after that Party shall have notified the Government of the United States of America of its intention to withdraw and the latter shall inform the other Parties accordingly. In the event of such withdrawal, the corresponding signatory to the Special Agreement shall pay all sums already due under the Special Agreement, together with a sum which shall be agreed between that signatory and the Committee in respect of costs which will result in the future from contracts concluded prior to notification of withdrawal. If agreement has not been reached within three months after notification of withdrawal, the Committee shall make a final determination of the sums which shall be paid by that signatory.

(b) Not less than three months after the rights of a signatory to the Special Agreement have been suspended pursuant to Article 4 (d) of the Special Agreement, and if that signatory has not meanwhile paid all sums due, the Committee, having taken into account any statement by that signatory or the corresponding Party, may decide that the Party in question is deemed to have withdrawn from this Agreement; this Agreement shall thereupon cease to be in force for that Party.

(c) Withdrawal by a Party from this Agreement shall automatically effect withdrawal from the Special Agreement by the corresponding signatory to the Special Agreement, but the obligation to make payments under paragraph (a) of this Article or under Article 4 (d) of the Special Agreement shall not be affected by such withdrawal.

(d) Upon any withdrawal under paragraph (a) or (b) of this Article, the Committee, to the extent required to account for the quota of the withdrawing signatory to the Special Agreement, shall increase the quotas of the remaining signatories to the Special Agreement in proportion to their respective quotas or as they may otherwise agree. However, if the signatory to the Special Agreement corresponding to the withdrawing Party was at the time of withdrawal a member of a group of signatories formed in order to appoint jointly a representative on the Committee pursuant to Article IV (b) of this Agreement, the quota of the signatory in question shall be distributed by increasing the quotas of the remaining signatories of that group to the extent that those remaining signatories may agree.

(e) Withdrawal by any Party may also take place if, at the request of the Party concerned, the Committee approves the transfer of the rights and obligations of that Party and the corresponding signatory to the Special Agreement under this Agreement and the Special Agreement to another Party and its corresponding signatory to the Special Agreement. Such transferee or transferees need not have been Parties to the Agreement or signatories to the Special Agreement prior to the time of such transfer.

ARTICLE XII

(a) This Agreement shall be open at Washington for six months from 20th August 1964 for signature:

(i) by the Government of any State which is listed by name in the Annex to the Special Agreement when it is first opened for signature, and

(ii) by the Government of any other State which is a member of the International Telecommunication Union, subject to approval

by the Committee of the quota of that Government or its designated communications entity, public or private. On such approval and entry into force or provisional application, the name of that State and the name of its corresponding signatory to the Special Agreement, and its quota are deemed to be inserted in the Annex to the Special Agreement.

(b) The Government of any State which is a member of the International Telecommunication Union may accede to this Agreement after it is closed for signature upon such financial conditions as the Committee shall determine. On such accession, the name of that State and the name of its corresponding signatory to the Special Agreement, and its quota are deemed to be inserted in the Annex to the Special Agreement.

(c) The quotas of the signatories to the Special Agreement shall be reduced pro rata as necessary to accommodate additional signatories to the Special Agreement, provided that the combined original quotas of all signatories to the Special Agreement other than the signatories listed in the Annex to the Special Agreement when this Agreement is first opened for signature shall not exceed 17%.

(d) This Agreement shall enter into force on the date upon which it has been signed without reservation as to approval, or has been approved after such reservation, by two or more Governments. Subsequently it shall enter into force in respect of each signatory Government on signature or, if it signs subject to a reservation as to approval, on approval by it.

(e) Any Government which signs this Agreement subject to a reservation as to approval may, so long as this

Agreement is open for signature, declare that it applies this Agreement provisionally and shall thereupon be considered a Party to this Agreement. Such provisional application shall terminate

(i) upon approval of this Agreement by that Government, or

(ii) upon withdrawal by that Government in accordance with Article XI of this Agreement.

(f) Notwithstanding anything contained in this Article, this Agreement shall not enter into force for any Government nor be applied provisionally by any Government until that Government or its corresponding signatory shall have signed the Special Agreement.

(g) If at the expiration of a period of nine months from the date when it is first opened for signature this Agreement has not entered into force for or has not been provisionally applied by the Government of a State which has signed it in accordance with paragraph (a) (i) of this Article, the signature shall be considered of no effect and the name of that State and of its corresponding signatory to the Special Agreement, and its quota shall be deemed to be deleted from the Annex to the Special Agreement; the quotas of the signatories to the Special Agreement shall accordingly be increased pro rata. If this Agreement has not entered into force for or has not been provisionally applied by the Government of a State which has signed it in accordance with paragraph (a) (ii) of this Article within a period of nine months from the date when it is first opened for signature, the signature shall be considered of no effect.

(h) The corresponding signatory to the Special Agreement of any Government which has signed this Agreement subject to a reservation as to approval, and which has not

provisionally applied it, may appoint an observer to the Committee in the same manner as that signatory could have been represented in accordance with Article IV (b) of this Agreement if that Government had approved this Agreement. Any such observer, who shall have the right to speak but not to vote, may attend the Committee only during a period of nine months from the date when this Agreement is first opened for signature.

(i) No reservation may be made to this Agreement except as provided in this Article.

ARTICLE XIII

(a) Notifications of approval or of provisional application and instruments of accession shall be deposited with the Government of the United States of America.

(b) The Government of the United States of America shall notify all signatory and acceding States of signatures, reservations of approval, deposits of notifications of approval or of provisional application, deposits of instruments of accession and notifications of withdrawals from this Agreement.

ARTICLE XIV

Upon entry into force of this Agreement, the Government of the United States of America shall register it with the Secretary-General of the United Nations in accordance with Article 102 of the Charter of the United Nations.

ARTICLE XV

This Agreement shall remain in effect until the entry into force of the definitive arrangements referred to in Article IX of this Agreement.

SPECIAL AGREEMENT

Whereas certain Governments have become Parties to an Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System; and

Whereas those Governments have undertaken therein to sign or to designate a communications entity to sign this Special Agreement;

The signatories to this Special Agreement hereby agree as follows:

ARTICLE 1

In this Special Agreement:

(a) "The Agreement" means the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System opened for signature on August 20, 1964, at Washington;

(b) "The Committee" means the Interim Communications Satellite Committee established by Article IV of the Agreement;

(c) "The Corporation" means the Communications Satellite Corporation incorporated under the laws of the District of Columbia pursuant to the Communications Satellite Act of 1962[1] of the United States of America;

(d) "Design" and "development" include research;

(e) "Quota", in relation to a signatory, means the percentage set forth opposite its name in the Annex to this Special Agreement as modified pursuant to the Agreement

---

[1]76 Stat. 423; 47 U.S.C.§§731-735.

and this Special Agreement;

(f) "Signatory" means a Government or a communications entity which has signed this Special Agreement and in respect of which it is in force;

(g) "The space segment" means the space segment defined in Article I (b) (i) of the Agreement.

ARTICLE 2

Each signatory undertakes to fulfill the obligations placed upon it by the Agreement and thereby obtains the rights provided therein.

ARTICLE 3

Each signatory undertakes to contribute a percentage of the costs of the design, development, construction and establishment of the space segment equal to its quota.

ARTICLE 4

(a) During a period of nine months from the date when the Agreement is first opened for signature, each signatory shall, within four weeks from the date of entry into force of this Special Agreement for that signatory, make a payment on account to the Corporation, in United States dollars, or in currency freely convertible into United States dollars, of a percentage equal to its quota of the expenditure which the Corporation has incurred for the design, development, construction and establishment of the space segment prior to the date when the Agreement is first opened for signature, and, according to estimates established by the Corporation at that date, is to incur for those purposes within six months after that date, together with its proportionate share of any additional contribution required pursuant to paragraph (b) of

this Article, and appropriate interest on all such amounts. Each signatory shall pay the remainder of its contribution pursuant to Article 3 of this Special Agreement in accordance with paragraph (b) of this Article.

(b) The Corporation shall submit to the Committee estimates of the time phasing of payments required pursuant to Article 3 of this Special Agreement. The Committee shall call on the signatories to make their respective proportionate payments in order to enable obligations to be met as they become due. Payments shall be made to the Corporation by each signatory in United States dollars, or in currency freely convertible into United States dollars, and in such amounts that, accounting on a cumulative basis, the sums paid by the signatories are in proportion to their respective quotas. Where a signatory other than the Corporation incurs obligations pursuant to authorization by the Committee, the Committee shall cause payments to be made to that signatory.

(c) Accounts for expenditure referred to in paragraphs (a) and (b) of this Article shall be subject to review by the Committee and shall be subject to such adjustment as the Committee may decide.

(d) Each signatory shall pay the amount due from it under paragraph (b) of this Article on the date designated by the Committee. Interest at the rate of six per cent per annum shall be added to any amount unpaid after that date. If the signatory has not made a payment within three months of its becoming due, the rights of the signatory under the Agreement and this Special Agreement shall be suspended. If, after such suspension, the Committee decides, pursuant to Article XI (b) of the Agreement, that the defaulting signatory is deemed to have withdrawn from this Special Agreement, the Committee shall then make a binding determination of the sums already due together with a sum

to be paid in respect of the costs which will result in the future from contracts concluded while that signatory was a party. Such withdrawal shall not, however, affect the obligation of the signatory concerned to pay sums due under this Special Agreement, whether falling due before it ceased to be a party or payable in accordance with the aforesaid determination of the Committee.

ARTICLE 5

The following shall be included as part of the costs of the design, development, construction and establishment of the space segment to be shared by the signatories in proportion to their respective quotas:

(a) The direct and indirect costs for the design, development, construction and establishment of the space segment incurred by the Corporation prior to the date when the Agreement is first opened for signature;

(b) All direct and indirect costs for the design, development, construction and establishment of the space segment incurred by the Corporation or pursuant to authorization by the Committee by any other signatory on behalf of the signatories to this Special Agreement subsequent to the date when the Agreement is first opened for signature;

(c) All direct and indirect costs incurred by the Corporation which are allocable to its performance of services as manager in the design, development, construction and establishment of the space segment and appropriate compensation to the Corporation, as may be agreed between the Corporation and the Committee, for such services.

ARTICLE 6

The following shall not form part of the costs to be shared by the signatories:

(a) Taxes on the net income of any of the signatories;

(b) Design and development expenditure on launchers and launching facilities except expenditure incurred for the adaptation of launchers and launching facilities in connection with the design, development, construction and establishment of the space segment;

(c) The costs of the representatives of the signatories on the Committee and on its advisory sub-committees and the staffs of those representatives except insofar as the Committee may otherwise determine.

ARTICLE 7

(a) In considering whether an earth station should be permitted to utilize the space segment, the Committee shall take into account the technical characteristics of the station, the technical limitations on multiple access to satellites due to the existing state of the art, the effect of geographical distribution of earth stations on the efficiency of the services to be provided by the system, the recommended standards of the International Telegraph and Telephone Consultative Committee and the International Radio Consultative Committee of the International Telecommunication Union, and such general standards as the Committee may establish. Failure by the Committee to establish general standards shall not of itself preclude the Committee from considering or acting upon any application for approval of an earth station to utilize the space segment.

(b) Any application for approval of an earth station to utilize the space segment shall be submitted to the Committee by the signatory to this Special Agreement in whose area the earth station is or will be located or, with respect to other areas, by a duly authorized communications entity. Each such application shall be submitted either individually or jointly on behalf of all signatories and duly authorized communications entities intending to utilize the space segment by means of the earth station which is the subject of the application.

(c) Any application for approval of an earth station located in the territory of a State whose Government is party to the Agreement which is to be owned or operated by an organization or organizations other than the corresponding signatory shall be made by that signatory.

ARTICLE 8

(a) Each applicant for approval of an earth station pursuant to Article 7 of this Special Agreement shall be responsible for making equitable and non-discriminatory arrangements for the use of the earth station by all signatories or duly authorized communications entities intended to be served by the earth station individually or jointly with other earth stations.

(b) To the extent feasible the Committee shall allot to the respective signatory or duly authorized communications entity, for use by each earth station which has been approved pursuant to Article 7 of this Special Agreement, an amount of satellite utilization appropriate to satisfy the total communications capability requested on behalf of all signatories and duly authorized communications entities to be served by such earth station.

(c) In making allotments of satellite utilization the Committee shall give due consideration to the quotas of the signatories to be served by each earth station.

ARTICLE 9

(a) The Committee shall specify the unit of satellite utilization and from time to time shall establish the rate of charge per unit at a level which, as a general rule, shall be sufficient, on the basis of the estimated total use of the space segment, to cover amortization of the capital cost of the space segment, an adequate compensation for use of capital, and the estimated operating, maintenance and administration costs of the space segment.

(b) In establishing the unit rate of charge pursuant to paragraph (a) of this Article, the Committee shall include in the estimated operating, maintenance and administration costs of the space segment the estimated direct and indirect costs of the Corporation which are allocable to its performance of services as manager in the operation and maintenance of the space segment and appropriate compensation to the Corporation, as may be agreed between the Corporation and the Committee, for such services.

(c) The Committee shall arrange for the payment of charges for allotments of satellite utilization to be made quarterly to the Corporation. The charges shall be computed in United States dollars and paid in United States dollars or in currency freely convertible into United States dollars.

(d) The components of the unit rate of charge representing amortization and compensation for the use of capital shall be credited to the signatories in proportion to their respective quotas. In the interests of avoiding unnecessary transfers of funds between signatories, and of keeping to a minimum the funds held by the Corporation on

behalf of the signatories, the Committee shall make suitable arrangements for funds representing these components to be retained by signatories where appropriate or, if collected, to be distributed among the signatories in such a way that the credits established for signatories are discharged.

(e) The other components of the unit rate of charge shall be applied to meet all operating, maintenance, and administration costs, and to establish such reserves as the Committee may determine to be necessary. After providing for such costs and reserves, any balance remaining shall be distributed by the Corporation, in United States dollars, or in currency freely convertible into United States dollars, among the signatories in proportion to their respective quotas; but if insufficient funds remain to meet the operating, maintenance and administration costs, the signatories shall pay to the Corporation, in proportion to their respective quotas, such amounts as may be determined by the Committee to be required to meet the deficiency.

(f) The Committee shall institute appropriate sanctions in cases where payments pursuant to this Article shall have been in default for three months or longer.

ARTICLE 10

(a) All contracts placed by the Corporation or by any other signatory pursuant to authorization by the Committee relating to design, development and procurement of equipment for the space segment shall, except as otherwise provided by the Committee, be based on responses to appropriate requests for quotations or invitations to tender from among persons and organizations qualified to perform the work under the proposed contract whose names are furnished to the Committee by the signatories.

(b) For contracts which exceed U.S. $125,000 the issue by the Corporation of requests for quotations or invitations to tender shall be in accordance with such conditions as the Committee may determine. The Corporation shall keep the Committee fully informed of decisions taken relating to such contracts.

(c) The Corporation shall consult the Committee before issuing requests for proposals and invitations to tender for contracts for design, development and procurement of equipment for the space segment which are expected to exceed U.S. $500,000. If, as a result of its evaluation of responses to such requests or invitations, the Corporation desires that a contract be placed which exceeds U.S. $500,000, it shall submit its evaluation and recommendations to the Committee. The approval of the Committee shall be required before each such contract is placed either by the Corporation as manager or by any other signatory pursuant to authorization by the Committee.

(d) The Committee shall approve the program for the launching of satellites and for associated services, the launch source and the contracting arrangements.

(e) Except as otherwise directed by the Committee, and subject to paragraphs (c) and (d) of this Article, all contractors shall be selected by the Corporation and all contracts shall be in the name of and be executed and administered by the Corporation as manager.

(f) Except as otherwise determined by the Committee, all contracts and sub-contracts placed for design, development and procurement of equipment for the space segment shall contain appropriate provisions to the effect that all inventions, technical data and information arising directly from any work performed under such contracts (except inventions, technical data and information pertaining to

launchers and launchings) shall be disclosed to the Committee and may be used only in the design, development, manufacture and use of equipment and components for the space segment established under the present interim arrangements or under any definitive arrangements which may succeed these interim arrangements, without payment of royalties, by each signatory or any person in the jurisdiction of a signatory or the Government which has designated that signatory.

(g) Except as it may otherwise determine, the Committee shall endeavor to have included in all contracts placed for design and development appropriate provisions which will ensure that inventions, technical data and information owned by the contractor and its sub-contractors which are directly incorporated in work performed under such contracts, may be used on fair and reasonable terms by each signatory or any person in the jurisdiction of a signatory or the Government which has designated that signatory, provided that such use is necessary, and to the extent that it is necessary to use such inventions, technical data and information for the exercise of the right to use under paragraph (f) of this Article.

(h) The provisions of this Article shall not be held to apply to contracts for design, development, construction and establishment of the space segment to which the Corporation is a party on the date when the Agreement is first opened for signature. Subject to the provisions of Article 4 (c) of this Agreement, all such contracts shall be recognized by the Committee as continuing obligations for budgetary purposes.

ARTICLE 11

Each signatory shall keep such books, records, vouchers and accounts of all costs for which it is authorized to be reimbursed under this Special Agreement with respect to the

design, development, construction, establishment, maintenance and operation of the space segment as may be appropriate and shall at all reasonable times make them available for inspection by members of the Committee.

ARTICLE 12

In addition to functions stated elsewhere in this Special Agreement, the Corporation, as manager pursuant to Article VIII of the Agreement, shall:

(a) prepare and submit to the Committee the annual programs and budgets;

(b) recommend to the Committee the type or types of space segment to be established;

(c) plan, conduct, arrange for and co-operate in studies, design work and development for improvement of the space segment;

(d) operate and maintain the space segment;

(e) furnish to the Committee such information as may be required by any representative on the Committee to enable him to discharge his responsibilities as a representative;

(f) arrange for technicians, selected by the Committee with the concurrence of the Corporation from among persons nominated by signatories, to participate in the assessment of designs and of specifications for equipment for the space segment;

(g) use its best efforts to arrange for inventions, technical data and information arising directly from any jointly financed work performed under contracts placed before the date on which the Agreement is opened for signature to be

disclosed to each signatory and to be made available for use free of charge in the design, development, manufacture and use of equipment and components for the space segment by each signatory or any person in the jurisdiction of the signatory or the Government which has designated that signatory.

ARTICLE 13

Neither the Corporation as signatory or manager, nor any other signatory as such, shall be liable to any other signatory for loss or damage sustained by reason of a failure or breakdown of a satellite at or after launching or a failure or breakdown of any other portion of the space segment.

ARTICLE 14

Arrangements shall be made whereby all legal disputes arising in connection with this Special Agreement or in connection with the rights and obligations of signatories can, if not otherwise settled, be submitted to the decision of an impartial tribunal, to be established in accordance with such arrangements, which would decide such questions in accordance with general principles of law. To this end, a group of legal experts appointed by the signatories and by the prospective signatories listed in the Annex to this Agreement when it is first opened for signature shall recommend a draft of a Supplementary Agreement containing such arrangements; the signatories shall, after considering that draft, conclude a Supplementary Agreement for such arrangements within a period of three months from the date when the Agreement is first opened for signature. The Supplementary Agreement shall be binding on all those who subsequently become signatories to this Special Agreement.

ARTICLE 15

Any proposed amendment to this Special Agreement shall first be submitted to the Committee. If recommended by the Committee for adoption, it shall enter into force for all signatories when notifications of approval have been deposited with the Government of the United States of America by two-thirds of the signatories, provided that no amendment may impose upon any signatory any additional financial obligation without its consent.

ARTICLE 16

This Special Agreement shall enter into force for each signatory on the day of signature, provided that the Agreement shall have entered into force for or shall have been provisionally applied by the Government which is or has designated the signatory in question; it shall continue in force ~~for as~~ long as the Agreement continues in force.

ACCORD ETABLISSANT UN REGIME PROVISOIRE APPLICABLE A UN SYSTEME COMMERCIAL MONDIAL DE TELECOMMUNICATIONS PAR SATELLITES

Les Gouvernements signataires du présent Accord,

Rappelant le principe énoncé dans la Résolution n° 1721(XVI) de l'Assemblée Générale des Nations Unies d'après lequel il importe de mettre dès que possible à la disposition de toutes les nations sans discrimination des moyens de télécommunications par satellites sur une base mondiale,

Souhaitant créer un système commercial mondial unique de télécommunications par satellites, pour servir à l'amélioration du réseau universel de télécommunications, étendre les services de télécommunications à toutes les régions du monde et contribuer ainsi à l'entente et à la paix mondiales;

Décidés à cet effet à assurer, pour le bien de toutes les nations et grâce aux meilleures techniques, le service le plus efficace et le plus économique possible, compatible avec une utilisation rationnelle et équitable des gammes de fréquences radioélectriques;

Estimant que les télécommunications par satellites doivent être organisées de telle façon que tous les Etats puissent avoir accès au système mondial et, que ceux qui le souhaitent puissent y investir des capitaux et participer ainsi à la conception, à la mise au point, à la construction (y compris la fourniture de matériel), à la mise en place, à l'entretien, à l'exploitation et à la propriété du système;

Estimant qu'il est souhaitable d'établir un régime provisoire prévoyant la création d'un système commercial mondial unique de télécommunications par satellites dans les

plus brefs délais possibles, en attendant l'élaboration du régime définitif relatif à l'organisation d'un système de ce genre;

Sont convenus de ce qui suit:

ARTICLE I

(a) Les Parties au présent Accord coopèrent, conformément aux principes énoncés au Préambule du présent Accord, en vue de pourvoir à la conception, à la mise au point, à la construction, à la mise en place, à l'entretien et à l'exploitation du secteur spatial du système commercial mondial de télécommunications par satellites selon le programme suivant:

(i) une phase expérimentale et d'exploitation au cours de laquelle est prévue l'utilisation d'un ou plusieurs satellites qui doivent être placés sur orbite synchrone en 1965;

(ii) des phases successives au cours desquelles seront utilisés des satellites dont le type reste à pré-ciser, en vue d'assurer les éléments de base d'un service mondial au cours de la deuxième moitié de 1967;

(iii) telles améliorations et extensions du système que le Comité créé par l'Article IV du présent Accord décidera sous réserve des dispositions de l'Article VI du présent Accord.

(b) Au sens du présent Accord,

(i) le terme "secteur spatial" désigne des satellites de télécommunications ainsi que l'équipement et les installations de repérage, de contrôle, de commande et autres, nécessaires au

fonctionnement des satellites de télécommunications;

(ii) les termes "conception" et "mise au point" visent également la rechereche.

ARTICLE II

(a) Chaque Partie signe l'Accord Spécial qui est ouvert a la signature en même temps que le présent Accord ou désigne l'organisme de télécommunications public ou privé habilité à le signer. Les rapports entre l'organisme de télécommunications ainsi désigné et la Partie qui l'a désigné sont régis par la législation intérieure du pays intéressé.

(b) Les Parties au présent Accord prévoient que, sous réserve des dispositions de leur législation interne, les administrations et les compagnies de télécommunications négocieront et concluront directement les accords de trafic appropriés concernant l'utilisation qu'ils feront des circuits de télécommunications prévus par le système à établir selon les dispositions du présent Accord ainsi que les services destinés au public, les installations, la répartition de bénéfices et les dispositions commerciales qui s'y rapportent.

ARTICLE III

Le secteur spatial est la propriété indivise des signataires de l'Accord Spécial proportionnellement à leur contribution respective aux dépenses de conception, de mise au point, de construction et de mise en place de ce secteur spatial.

ARTICLE IV

(a) Un Comité intérimaire des télécommunications par satellites, ci-après dénommé "le Comité", est créé par le présent Accord pour mettre en oeuvre la coopération prévue à l'Article I. Il est chargé de la conception, de la mise au point, de la construction, de la mise en place, de l'entretien et de l'exploitation du secteur spatial du système; en particulier, il exerce les fonctions et est investi des pouvoirs énoncés dans le présent Accord ainsi que dans l'Accord Spécial.

(b) Le Comité est constitué de la manière suivante: un représentant pour chaque signataire de l 'Accord Spécial dont la quote-part n'est pas inférieure à 1,5% et un représentant pour deux ou plusieurs signataires de l'Accord Spécial dont la somme des quotes-parts n'est pas inférieure à 1,5% et qui sont convenus d'être ainsi représentés.

(c) Dans l'exercice des attributions de caractère financier qui lui sont dévolues par le présent Accord et par l'Accord Spécial, le Comité est assisté d'un sous-comité financier consultatif; celui-ci sera créé par le Comité dès l'entrée en fonctions de ce dernier.

(d) Le Comité a la faculté de créer tous autres souscomités consultatifs qu'il jugera utiles.

(e) Aucun signataire ou groupe de signataires de l'Accord Spécial ne pourra être privé de sa représentation au Comité en raison des réductions effectuées conformément à l'Article XII (c) du présent Accord.

(f) Au sens du présent Accord le mot "quote-part" lorsqu'il s'agit d'un signataire de l'Accord Spécial signifie le pourcentage mentionné à l'Annexe à l'Accord Spécial en regard de son nom ou tel qu'il a été modifié conformément au présent Accord et à l'Accord Spécial.

ARTICLE V

(a) Chaque signataire ou groupe de signataires de l'Accord Spécial représenté au Comité dispose d'un nombre de voix égal au chiffre de sa quote-part ou de la somme de leurs quotes-parts selon le cas.

(b) Le quorum nécessaire pour chaque réunion du Comité est constitué de représentants disposant au total d'un nombre de voix supérieur d'au moins 8,5 voix au nombre de voix dont dispose le représentant qui a le droit de vote le plus élevé.

(c) Le Comité s'efforce d'agir à l'unanimité; toutefois, s'il ne le peut il prend ses décisions à la majorité des voix exprimées, sauf que pour les questions suivantes, et sous réserve des paragraphes (d) et (e) du présent Article, toute 'décision est prise par le vote de représentants dont le nombre total de voix est supérieur d'au moins 12,5 voix à celui dont dispose le représentant qui a le nombre de voix le plus élevé:

(i) choix du ou des types de secteur spatial à établir;

(ii) définition des normes générales pour l'approbation des stations terriennes devant avoir accès au secteur spatial;

(iii) approbation des budgets par catégories principales;

(iv) révision des comptes conformément à l'Article 4 (c) de l'Accord Spécial;

(v) établissement du taux unitaire de la redevance d'utilisation du système de satellites conformément à l'Article 9 (a) de l'Accord Spécial;

(vi) décisions relatives aux contributions supplémentaires conformément à l'Article VI (b) du présent Accord;

(vii) approbation du placement des contrats conformément à l'Article 10 (c) de l'Accord Spécial;

(viii) approbation des questions relatives au lancement des satellites conformément à l'Article 10 (d) de l'Accord Spécial;

(ix) approbation des quotes-parts conformément à l'Article XII (a) (ii) du présent Accord;

(x) établissement des conditions financières d'adhésion conformément à l'Article XII (b) du présent Accord;

(xi) décisions relatives à la dénonciation conformément à l'Article XI (a) et (b) du présent Accord et à l'Article 4 (d) de l'Accord Spécial;

(xii) proposition d'amendements conformément à l'Article 15 de l'Accord Spécial;

(xiii) adoption du règlement intérieur du Comité et des sous-comités consultatifs;

(xiv) approbation d'une rémunération appropriée à payer à la Société pour l'exécution des services en tant que gérant, conformement aux Articles 5 (c) et 9 (b) de l'Accord Spécial.

(d) Si le Comité, à qui a été proposée, en vue d'une décision, une question au sujet du type de secteur spatial à créer afin de réaliser l'objectif prévu au paragraphe (a) (ii) de l'Article I du présent Accord, n'a pas pris celle-ci à l 'expiration du soixantième jour suivant la date à laquelle cette question a été posee, une décision sur cette question peut être prise après ce délai par votes favorables de représentants dont le nombre total de voix est supérieur de 8,5 voix à celui dont dispose le représentant qui a le droit de vote le plus élevé.

(e) Si le Comité, à l'expiration du soixantième jour suivant la date à laquelle lui a été proposée pour décision une des questions suivantes en rapport avec l 'achèvement des objectifs prévus dans les paragraphes (a) (i) et (a) (ii) de l'Article I du présent Accord et ne l'a pas approuvée:

(i) toute catégorie particulière de budget conformément au paragraphe (c) (iii) du présent Article;

(ii) le placement de tout contrat particulier conformément au paragraphe (c) (vii) du présent Article ou

(iii) toute question particulière relative aux lancements de satellites conformément au paragraphe (c) (viii) du présent Article,

une décision sur cette question peut être prise après ce délai par votes favorables de représentants dont le nombre total de voix est supérieur de 8,5 voix à celui dont dispose le représentant qui a le droit de vote le plus élevé.

ARTICLE VI

(a) Les contributions des signataires de l'Accord Spécial aux dépenses de conception, de mise au point, de construction et de mise en place du secteur spatial pendant la durée du régime provisoire sont établies sur la base d'un monta it total évalué à deux cents millions de dollars des Etats Unis. Les signataires de l'Accord Spécial versent leurs quotes-parts de ces dépenses conformément aux dispositions de l'Accord Spécial.

(b) Le Comité décide s'il convient, pendant la duree du régime provisoire, d'appeler des contributions complémentaires au-delà du montant de deux cents millions de dollars des Etats-Unis; il détermine le montant de ces contributions. Si l'appel de contributions complémentaires pendant la durée du régime provisoire tend à établir le montant total des contributions à plus de trois cents millions de dollars des Etats-Unis, une conférence spéciale des signataires de l'Accord Spécial sera réunie à l'effet d'examiner la situation et de recommander les mesures qu'elle jugera appropriées avant toute décision du Comité. La conférence arrêtera son règlement intérieur.

(c) Chaque signataire de l'Accord Spécial a la faculté d'assumer l'obligation de verser la totalité ou une partie de sa quote-part des contributions complémentaires; aucun signataire de l'Accord Spécial n'est tenu d'assumer cette obligation. Dans la mesure où l 'un quelconque de ces signataires n'assume pas cette obligation, celle-ci peut être assumee par les autres signataires dans la proportion de leurs quotes-parts respectives ou d'une autre manière dont ils pourraient convenir. Toutefois, si un signataire de l'Accord Spécial, qui fait partie d'un groupe de signataires

formé pour nommer conjointement un représentant au Comité suivant les dispositions de l'Article IV (b) du présent Accord n'assume pas l'obligation de verser de telles contributions supplémentaires, les autres signataires de ce groupe peuvent assumer cette obligation, en tout ou en partie, dans la proportion dont ils auront convenu. Les quotes-parts des signataires de l'Accord Spécial sont ajustées en conséquence.

ARTICLE VII

Conformément aux principes énoncés au Préambule du présent Accord et pour assurer l'utilisation la plus efficace possible du secteur spatial, aucune station terrienne ne peut être autorisée à utiliser celui-ci sans l'approbation du Comité, donnée suivant les dispositions de l'Article 7 de l'Accord Spécial.

ARTICLE VIII

En ce qui concerne sa conception, sa mise au point, sa construction, sa mise en place, son exploitation et son entretien le secteur spatial est géré, conformément aux directives générales et éventuellement aux instructions particulières du Comité, par la "Communication Satellite Corporation", appelée la Société dans le texte du présent Accord, et constituée conformément à la législation du District de Columbia.

ARTICLE IX

(a) Tenant compte du programme établi à l'Article I du présent Accord, le Comité soumettra aux diverses Parties au présent Accord, dans l'année qui suivra la mise en exploitation du système mondial initial et, au plus tard le 1er janvier 1969, un rapport présentant ses recommandations sur les dispositions définitives concernant le système

international mondial destiné à remplacer le régime provisoire établi par le présent Accord. Ce rapport, qui devra refléter pleinement toutes les nuances d'opinion, étudiera en particulier si le régime provisoire devra devenir définitif, ou si une organisation internationale permanente, constituée notamment d'une Conférence Générale et de services administratifs et techniques internationaux, devra être créée.

(b) Quelle que soit la forme du régime définitif,

(i) les buts de celui-ci devront être conformes aux principes énoncés au Préambule du présent Accord,

(ii) comme au présent Accord tous les Etats membres de l'Union Internationale des Télécommunications ou leurs organismes désignés à cet effet pourront y adhérer,

(iii) les investissements faits par les signataires de l'Accord Spécial seront sauvegardés,

(iv) toutes les Parties au régime définitif auront la possibilité de contribuer à la définition de la politique générale.

(c) Le rapport du Comité sera examiné au cours d'une conférence internationale à laquelle peuvent participer également les organismes de télécommunications dûment désignés et qui sera réunie à cet effet par le Gouvernement des EtatsUnis d'Amérique dans les trois mois suivant le dépôt du rapport. Les Parties au présent Accord s'efforceront d'obtenir que le régime définitif soit créé à la date la plus proche possible afin qu'il puisse entrer en vigueur au plus tard le ler janvier 1970.

ARTICLE X

Dans l'examen des contrats et dans l'exercice de leurs autres responsabilités, le Comité et la Société en tant que gérant tiennent compte de la nécessité de concevoir, mettre au point et acquérir le matériel et obtenir les services les plus appropriés et au meilleur prix pour le fonctionnement et l'exploitation les plus efficaces du secteur spatial. Lorsque les réponses aux demandes de propositions ou aux appels d'offre sont jugées comparables quant à la qualité, au prix c.i.f. et aux délais, le Comité et la Société en tant que gérant veillent également à ce que les contrats soient répartis autant que possible de telle façon que le matériel soit conçu, mis au point et acquis dans les pays qui sont Parties au présent Accord en proportion approximative des quotes-parts respectives des signataires correspondants de l'Accord Spécial; à condition que dans la conception, la mise au point et la fourniture de ce matériel, les intérêts communs des Parties au présent Accord et des signataires de l'Accord Spécial ne soient pas desservis. Dans la mesure où cela peut être accompli sans diminuer la responsabilité assumée par l'entrepreneur principal concernant l'exécution des travaux aux termes du contrat, le Comité et la Société en tant que gérant veillent également à ce que les principes énoncés ci-dessus soient mis en pratique en ce qui concerne les principaux sous-traitants.

ARTICLE XI

(a) Le présent Accord peut être dénoncé par toute Partie; il cesse d'être en vigueur, en ce qui la concerne, trois mois après que celle-ci a notifié sa dénonciation au Gouvernement des Etats-Unis d'Amérique, lequel en avise les autres Parties. Dans ce cas, le signataire correspondant de l'Accord Spécial paie la totalité des sommes déjà dues aux termes de l'Accord Spécial, auxquelles s'ajoute une somme convenue entre ce signataire et le Comité pour couvrir les dépenses

résultant ultérieurement de contrats passés avant la notification de la dénonciation. Si un Accord n'a pas été conclu dans les trois mois qui suivront la notification de la dénonciation, le Comité déterminera de façon définitive les montants qui seront payés par ce signataire.

(b) Trois mois au moins après la date où l'exercice des droits d'un signataire de l'Accord Spécial est déclaré suspendu conformément au paragraphe (d) de l'Article 4 de l'Accord Spécial et si ce signataire n'a pas payé entre-temps toutes les sommes dues, le Comité, tenant compte des déclarations de la Partie ou du signataire correspondant de l'Accord Spécial, peut décider que cette Partie doit être considérée comme ayant dénoncé le présent Accord, lequel cessera, en conséquence, de lui être applicable.

(c) La dénonciation du présent Accord par une Partie vaut dénonciation de l'Accord Spécial par le signataire correspondant, mais l'obligation d'effectuer des paiements aux termes du paragraphe (a) du présent Article ou aux termes du paragraphe (d) de l'Article 4 de l'Accord Spécial n'est pas affectée par cette dénonciation.

(d) En cas de dénonciation effectuée aux termes des alinéas (a) ou (b) ci-dessus, le Comité procédera, dans la limite de la quote-part du signataire correspondant de l'Accord Spécial, à l'augmentation des quotes-parts des autres signataires de l'Accord Spécial en proportion de leurs quotes-parts respectives ou selon une autre méthode dont ces signataires conviendront. Toutefois, si un signataire de l'Accord Spécial correspondant à la Partie qui dénonce est, à ce moment, membre d'un groupe de signataires formé pour nommer conjointement un représentant au Comité, suivant les dispositions de l'Article IV (b) du présent Accord, la quote-part de ce signataire sera répartie entre les autres signataires du groupe, dans la proportion dont ils auront convenu.

(e) La dénonciation par toute Partie peut également intervenir dans le cas où, à la demande de la Partie intéressée, le Comité approuve le transfert à une autre Partie et à son signataire de l'Accord Spécial, des droits et obligations accordés à la Partie demandante et à son signataire correspondant de l'Accord Spécial par les dispositions du présent Accord et de l'Accord Spécial. Il ne sera pas nécessaire que ces derniers aient été Parties à l'Accord ou signataires de l'Accord Spécial avant la date de ce transfert.

ARTICLE XII

(a) Pendant une période de six mois à compter du 20 août 1964 le présent Accord est ouvert, à Washington, à la signature:

(i) du gouvernement de chaque Etat dont le nom figure, à la date ci-dessus, à l'Annexe à l'Accord Spécial, et

(ii) du gouvernement de tout autre Etat membre de l'Union Internationale des Télécommunications, sous réserve toutefois de l'approbation par le Comité de la quote-part revenant à ce gouvernement ou à l'organisme de télécommunications public ou privé désigné par lui. Après approbation et entrée en vigueur ou en application provisoire, le nom de l 'Etat et celui du signataire correspondant de l'Accord Spécial, ainsi que le chiffre de sa quote-part, sont considérés comme inscrits à l'Annexe de l'Accord Spécial.

(b) Le gouvernement de tout Etat membre de l'Union Internationale des Télécommunications peut adhérer au présent Accord après qu'il aura cessé d'être ouvert à la

signature; l'adhésion se fera aux conditions financières que déterminera le Comité. Une fois l'adhésion effectuée, le nom de l'Etat et celui du signataire correspondant de l'Accord Spécial, ainsi que le chiffre de sa quote-part, seront considérés comme inscrits à l'Annexe de l'Accord Spécial.

(c) Pour permettre l'adhésion à l'Accord Spécial de nouveaux signataires, les quotes-parts des autres signataires de l'Accord Spécial sont réduites en proportion. Toutefois, la somme des quotes-parts attribuées à l'origine à tous les signataires de l'Accord Spécial, autres que ceux qui figuraient à l'Annexe de celui-ci lorsqu'il a été ouvert à la signature, ne devra pas dépasser 17%.

(d) L'Accord prend effet à la date à laquelle il a été signé sans réserve d'approbation ou a été approuvé après une telle réserve par deux ou plusieurs gouvernements. Par la suite, il prend effet à l'égard de chacun des gouvernements signataires, à la date où il l'a signé, ou, s'il signe sous réserve d'approbation, à la date de levée de la réserve.

(e) Tout Gouvernement qui signe le présent Accord sous réserve d'approbation peut, aussi longtemps que celui-ci reste ouvert à la signature, déclarer qu'il l'applique à titre provisoire; il est dès lors considéré comme Partie à l'Accord. Cette application provisoire prend fin:

(i) par l'approbation du présent Accord par ce Gouvernement, ou bien

(ii) par la dénonciation qu'il en fait en vertu de l'Article XI du présent Accord.

(f) Nonobstant toute disposition contraire du présent Article, le présent Accord n'entrera en vigueur à l'égard de l'un quelconque des Gouvernements ni ne sera appliqué par lui de façon provisoire avant que ce Gouvernement ou son signataire correspondant n'ait signé l'Accord Spécial.

(g) Si à l'expiration d'une période de neuf mois suivant la date où il est ouvert à la signature, le présent Accord n'est pas entré en vigueur pour le Gouvernement d'un Etat qui l'a signé conformément au paragraphe (a) (i) du présent Article ou n'a pas été appliqué à titre provisoire par celui-ci, la signature de celui-ci est considérée comme nulle et le nom de l'Etat et celui du signataire correspondant de l'Accord Spécial, ainsi que la quote-part de celui-ci, sont considérés comme rayés de l'Annexe à l'Accord Spécial; les quotes-parts des signataires de l'Accord Spécial seront en conséquence augmentées proportionnellement. Si le présent Accord n'est pas entré en vigueur à l'égard du Gouvernement d'un Etat qui l'a signé conformément à l'alinéa (a) (ii) dans les neuf mois suivant la date à laquelle il est ouvert à la signature ou n'a pas fait l'objet d'une application provisoire de sa part, la signature de ce Gouvernement est considérée comme nulle.

(h) Le signataire de l'Accord Spécial correspondant à un Gouvernement ayant signé cet Accord sous réserve d'approbation et qui ne l'a pas mis en application provisoire peut nommer un observateur au Comité, de la même façon qu'il aurait pu désigner un représentant conformément à l'Article IV (b) du présent Accord s'il avait approuvé celui-ci. Cet observateur aura le droit de prendre la parole, mais non de voter; il peut assister aux réunions du Comité pendant une période de neuf mois au plus après la date où le présent Accord est ouvert à la signature.

(i) Aucune réserve ne peut être apportée au présent Accord sauf celles qui sont prévues au présent Article.

ARTICLE XIII

(a) Les notifications d'approbation ou d'application provisoire ainsi que les instruments d'adhésion seront déposés auprès du Gouvernement des Etats-Unis d'Amérique.

(b) Le Gouvernement des Etats-Unis d'Amérique avisera tous les signataires et les Etats ayant adhéré à l'Accord des signatures, des réserves d'approbation, du dépôt des notifications d'approbation ou d'application provisoire, du dépôt des instruments d'adhésion et des notifications de dénonciation du présent Accord.

ARTICLE XIV

Lors de l'entrée en vigueur du présent Accord, le Gouvernement des Etats-Unis d'Amérique le fera enregistrer auprès du Secrétaire Général des Nations Unies conformément à l'Article 102 de la Charte des Nations Unies.

ARTICLE XV

Le présent Accord restera applicable jusqu'à l'entrée en vigueur du régime définitif mentionné à l'Article IX du présent Accord.

IN WITNESS WHEREOF the undersigned duly authorized thereto have signed this Agreement.

DONE at Washington this twentieth day of August, 1964, in the English and French languages, both texts being equally authoritative, in a single original, which shall be deposited in the archives of the Government of the United States of America, which shall transmit a certified copy to each signatory or acceding Government and to the Government of each State which is a member of the International Telecommunication Union.

EN FOI DE QUOI les soussignés dûment autorisés ont apposé leur signature au présent Accord.

FAIT à Washington le vingt août 1964, en langues anglaise et française, les deux textes faisant également foi, en un seul original qui sera déposé dans les archives du Gouvernement des Etats-Unis d'Amérique, lequel en transmettra une copie certifiée conforme à chaque signataire ou gouvernement adhérent et au gouvernement de chaque Etat membre de l'Union Internationale des Télécommunications.

FOR THE GOVERNMENT OF AUSTRALIA:
POUR LE GOUVERNEMENT DE L'AUSTRALIE:

FOR THE GOVERNMENT OF AUSTRIA
POUR LE GOUVERNEMENT DE L'AUTRICHE:

FOR THE GOVERNMENT OF BELGIUM: POUR LE GOUVERNEMENT DE LA BELGIQUE:

FOR THE GOVERNMENT OF CANADA: POUR LE GOUVERNEMENT DU CANADA:

FOR THE GOVERNMENT OF DENMARK: POUR LE GOUVERNEMENT DU DANEMARK:

FOR THE GOVERNMENT OF FRANCE:
POUR LE GOUVERNEMENTDE LA FRANCE:

FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY: POUR LE GOUVERNEMENT DE LA REPUBLIQUE FEDERALE D' ALLEMAGNE:

FOR THE GOVERNMENT OF IRELAND:
POUR LE GOUVERNEMENT DE L'IRLANDE:

FOR THE GOVERNMENT OF ITALY:
POUR LE GOUVERNEMENT DE L'ITALIE:

FOR THE GOVERNMENT OF JAPAN:
POUR LE GOUVERNEMENT DU JAPON:

FOR THE GOVERNMENT OF THE NETHERLANDS:
POUR LE GOUVERNEMENT DES PAYS-BAS:

FOR THE GOVERNMENT OF NORWAY:
POUR LE GOUVERNEMENT DE LA NORVEGE:

FOR THE GOVERNMENT OF PORTUGAL:
POUR LE GOUVERNEMENT DU PORTUGAL:

FOR THE GOVERNMENT OF SPAIN:
POUR LE GOUVERNEMENT DE L'ESPAGNE:

FOR THE GOVERNMENT OF SWEDEN:
POUR LE GOUVERNEMENT DE LA SUEDE:

FOR THE GOVERNMENT OF SWITZERLAND:
POUR LE GOUVERNEMENT DE LA SUISSE:

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND:
POUR LE GOUVERNEMENT DU ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
POUR LE GOUVERNEMENT DES ETATS-UNIS D'AMERIQUE:

FOR THE GOVERNMENT OF THE VATICAN CITY:
POUR LE GOUVERNEMENT DE L'ETAT D LA CITE DU VATICAN:

Note by the Department of State

Signatories to
Agreement Establishing Interim Arrangements for a
Global Commercial Communications Satellite System
Opened for signature at Washington August 20,1964*

FOR THE GOVERNMENT OF AUSTRALIA:
ALAN RENOUF

FOR THE GOVERNMENT OF CANADA:
GEORGE P. KIDD

FOR THE GOVERNMENT OF DENMARK:
E. KROG-MEYER
subject to ratification

FOR THE GOVERNMENT OF FRANCE:
BRUNO DE LEUSSE
sous réserve de la ratification parlementaire

FOR THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY:
GEORG VON LILIENFELD *September 21, 64*

FOR THE GOVERNMENT OF ITALY:
SERGIO FENOALTEA
subject to ratification

FOR THE GOVERNMENT OF JAPAN:
RYUJI TAKEUCHI

FOR THE GOVERNMENT OF THE NETHERLANDS:
C. SCHURMANN
subject to approval

FOR THE GOVERNMENT 0F NORWAY:

HANS ENGEN *31st August 1964*

FOR THE GOVERNMENT OF SPAIN:
MERRY DEL VAL

FOR THE GOVERNMENT OF SWITZERLAND:
M. GELZER *Sept. 16th, 1964*
subject to ratification

*Signed August 20, 1964, unless other indicated.

ACCORD SPECIAL

Attendu que certains Gouvernements sont devenus Parties a un Accord établissant un régime provisoire applicable à un système commercial mondial de télécommunications par satellites;

Attendu également que ces Gouvernements se sont engages par cet Accord à signer le présent Accord Spécial ou à désigner un organisme de télécommunications habilité à le signer;

Les signataires du présent Accord Spécial sont convenus de ce qui suit:

ARTICLE 1

Au sens du présent Accord Spécial:

(a) "L'Accord" désigne l' Accord concernant le régime provisoire applicable à un système commercial mondial de télécommunications par satellites, ouvert à la signature le 20 août 1964 à Washington.

(b) "Le Comité" désigne le comité provisoire des télécommunications par satellites créé par l'Article IV de l'Accord.

(c) "La Société" désigne la "Communications Satellite Corporation" constituée conformément à la législation du District de Columbia, en application du "Communications Satellite Act" de 1962 des Etats-Unis d'Amérique.

(d) Les termes "conception" et "mise au point" visent également la recherche.

(e) Le mot "quote-part" se rapportant à un signataire correspond au pourcentage indiqué en regard de son nom à l'Annexe au présent Accord Spécial modifié conformément à

l'Accord et au présent Accord Spécial.

(f) Le mot "signataire" désigne tout gouvernement ou organisme de télécommunications ayant signé le présent Accord Spécial qui est en vigueur à son égard.

(g) L'expression "secteur spatial" désigne le secteur spatial défini à l'Article I (b) (i) de l'Accord.

ARTICLE 2

Tout signataire s'engage à s'acquitter des obligations prévues à l'Accord et acquiert ainsi les droits qui en découlent.

ARTICLE 3

Tout signataire s'engage à contribuer, pour un pourcentage égal à sa quote-part, aux dépenses de conception, de mise au point, de construction et de mise en place du secteur spatial.

ARTICLE 4

(a) Les signataires versent à la Société, dans les neuf mois suivant l'ouverture de l'Accord à la signature et dans les quatre semaines suivant la date à laquelle l 'Accord Spécial entre en vigueur à leur égard, un acompte, en dollars des Etats-Unis ou en devises pouvant être librement converties en dollars des Etats-Unis, proportionnel à leurs quotes-parts, des dépenses que la Société a effectuées pour la conception, la mise au point, la construction et la mise en place du secteur spatial antérieurement à la date d'ouverture de l'Accord à la signature et de celles qu'elle effectuera aux mêmes fins pendant les six mois suivant la date susvisée, selon les prévisions établies par la Société à cette date; les signataires effectuent en même temps le versement de leurs quotes-parts des contributions complémentaires

éventuellement appelées en application des dispositions du paragraphe (b) du présent Article; a ces versements s'ajoutent les intérêts normaux sur les sommes exigibles. Les signataires versent le solde de leurs contributions, telles que définies à l'Article 3 du présent Accord Spécial, suivant les modalités prévues au paragraphe (b) du présent Article.

(b) La Société présente au Comité un échéancier prévisionnel des versements ultérieurs que l'application des dispositions de l'Article 3 du présent Accord Spécial rendra écessaires et le Comité invite les signataires à effectuer eurs versements proportionnels de façon que les dépenses soient couvertes au fur et à mesure de leurs échéances. Les signataires effectuent leurs versements auprès de la Société en dollars des Etats-Unis ou en devises pouvant être librement converties en dollars des Etats-Unis de telle façon que les versements cumulés soient en permanence proportionnels à leurs quotes-parts. Lorsqu'un signataire autre que la Société expose des dépenses, en vertu d'une autorisation du Comité, le Comité lui en fait obtenir le règlement.

(c) Les co ptes relatifs aux dépenses visées aux paragraphes (a) t b) ci-dessus sont examinés par le Comité et le cas échéant révisés par celui-ci.

(d) Les signataires effectuent à la date fixée par le Comité les paiements leur incombant en application des dispositions du paragraphe (b) de cet Article. Toute somme restant due après la date fixée est grevée d'un intérêt annuel de six pour cent. Lorsqu'un signataire n'a pas effectué de paiement dans les trois mois qui suivent l'échéance, l'exercice de ses droits aux termes de l'Accord et du présent Accord Spécial est suspendu. Si, à la suite de cette suspension, le Comité, conformément à l'Article XI (b) de l'Accord, décide que le signataire défaillant est considéré comme ayant dénoncé l 'Accord Spécial, le Comité arrête sans appel le

Sherman Antitrust Act, §§ 1, 2, 26 Stat. 209, as amended, 15 U.S.C. §§ 1, 2, (1988)

montant des sommes déjà dues auxquelles s'ajoute une somme à payer pour les dépenses qui résulteraient ultérieurement de contrats conclus lorsque ce signataire était Partie au présent Accord Spécial. Pareille dénonciation n'affecte toutefois pas l'obligation, pour le signataire en cause, de payer les sommes dues aux termes du présent Accord, que leurs échéances se produisent avant qu'il ait cessé d'être Partie ou qu'elles soient payables conformément à la décision ci-dessus du Comité.

ARTICLE 5

Sont comprises dans les dépenses de conception, de mise au point, de construction et de mise en place du secteur spatial, pour être réparties entre les signataires proportionnellement à leur quote-part respective:

(a) les dépenses directes et indirectes effectuées à ces fins par la Société avant la date à laquelle l'Accord est ouvert à la signature;

(b) toutes les dépenses directes et indirectes effectuées a ces mêmes fins par la Société ou, en vertu d'une autorisation du Comité, par tout autre signataire, au nom des signataires du présent Accord Spécial, après la date à laquelle l'Accord est ouvert a la signature;

(c) toutes les dépenses directes et indirectes effectuées à ces mêmes fins par la Société dans sa gestion, ainsi que la juste rémunération des fonctions exercées par la Société dans les conditions convenues entre celle-ci et le Comité.

ARTICLE 6

Ne font pas partie des dépenses à répartir entre les signataires:

(a) les impôts sur le revenu net de l'un quelconque des signataires;

(b) les dépenses nécessaires à la conception et la mise au point des lanceurs et des installations de lancement, à l'exception toute fois des dépenses effectuées pour l'adaptation de ces lanceurs et de ces installations de lancement à la conception. la mise au point, la construction et la mise en place du secteur spatial;

(c) les dépenses relatives aux représentants des signataires au Comité et aux sous-comités consultatifs, ainsi qu'au personnel attaché à ces représentants, sauf si le Comité en décide autrement.

ARTICLE 7

(a) Lorsqu'il examine s'il faut autoriser une station terrienne à utiliser le secteur spatial, le Comite tient compte des caractéristiques techniques de cette station, des limitations qu'impose l'état actuel de la technologie aux possibilités d'accès multiples aux satellites, des conséquences de la distribution géographique des stations terriennes pour l'efficacité des services qui doivent être rendus par le système. Il tient compte également des avis du Comité Consultatif International Télégraphique et Téléphonique et du Comité Consultatif International des Radiocommunications de l 'Union Internationale des Télécommunications et des normes générales que le Comité peut établir. Même si le Comité n'a pu établir de normes générales, cela ne doit pas l'empêcher d'examiner et de donner suite à une demande d'approbation relative à l'utilisation du secteur spatial par une station terrienne.

(b) Les demandes visant à autoriser une station terrienne à utiliser le secteur spatial sont soumises au Comité par le signataire du présent Accord Spécial dans la

région duquel est ou sera située cette station terrienne ou, s'il s'agit d'autres régions, par un organisme de télécommunications dûment autorisé. Chaque demande de ce genre est présentée soit individuellement, soit au nom de tous les signataires et organismes de télécommunications dûment autorisés qui désirent utiliser le secteur spatial au moyen de la station terrienne faisant l'objet de la demande.

(c) La demande d'approbation d'une station terrienne située sur le territoire d'un Etat dont le Gouvernement est Partie à l'Accord mais dont la propriété ou l'exploitation relèvent d'une organisation ou d'organisations autres que le signataire correspondant, est présentée par ce dernier.

ARTICLE 8

(a) Chaque organisme présentant une demande d'approbation de station terrienne, conformément à l'Article 7 du présent Accord Spécial, prend des dispositions pour l'utilisation équitable et sans discrimination de la station terrienne par tous les signataires et tous leurs organismes de télécommunications dûment autorisés devant être desservis par cette station, soit seule, soit en liaison avec d'autres stations.

(b) Dans la mesure du possible, le Comité attribue au signataire ou à l'organisme dûment autorisé une part de l'utilisation du système de satellites par chaque station terrienne approuvée conformément à l'Article 7 du présent Accord Spécial, et correspondant au potentiel total de télécommunications requis pour l'ensemble des signataires et des organismes de télécommunications dûment autorisés à être desservis par cette station terrienne.

(c) Dans l'établissement de ces attributions, le Comite tient compte des quotes-parts des signataires qui sont desservis par chaque station terrienne.

ARTICLE 9

(a) Le Comité détermine l'unité d'utilisation du systeme de satellites; il fixe et revise ultérieurement le taux unitaire de redevance à un niveau tel qu'en principe celui-ci soit suffisant, sur la base de l'utilisation totale prévue du secteur spatial, pour couvrir l'amortissement et la rémunération adéquate du capital engagé dans le secteur spatial, et les dépenses prévues d'exploitation, d'entretien et de gestion du secteur spatial.

(b) Pour la fixation du taux unitaire de redevance en application des dispositions du paragraphe (a) ci-dessus, le Comité fera entrer dans l'estimation des dépenses d'exploitation, d'entretien et de gestion du secteur spatial les dépenses supportees de façon directe et indirecte par la Société et correspondant à l 'exercice de ses fonctions de gestion dans l'exploitation et l'entretien du secteuro spatial, y compris la rémunération appropriée des services rendus par la Société, à fixer en accord entre celle-ci et le Comité.

(c) Le Comité prend toutes dispositions pour que les redevances d'attribution du système de satellites soient réglées trimestriellement à la Société. Les redevances sont calculées et payées en dollars des Etats-Unis, ou en devises pouvant être librement converties en dollars des Etats-Unis.

(d) Les éléments constitutifs du taux unitaire de redevance qui correspondent à l 'amortissement et à la remunération du capital sont portés au crédit des signataires en proportion de leurs quotes-parts. En vue d'éviter des mouvements de fonds inutiles entre les signataires et de maintenir au niveau le plus faible possible le volume des fonds détenus par la Société pour le compte des signataires, le Comité prend les mesures nécessaires pour que les fonds correspondant aux éléments susmentionnés soient, lorsqu'il y a lieu, conservés par les signataires, ou, si lesdits fonds ont

été encaissés, répartis entre ceux-ci de telle façon que tous les montants portés au crédit des signataires soient effectivement réglés à ces derniers.

(e) Les autres éléments constitutifs du taux unitaire de redevance couvriront les dépenses d'exploitation, d 'entretien et de gestion, ainsi que les réserves que le Comité jugera utile de constituer. Le solde subsistant après ces affectations sera réparti par la Société, en dollars des Etats-Unis, ou en devises pouvant être librement converties en dollars des Etats-Unis, parmi les signataires et en proportion de leurs quotes-parts. Si les disponibilités ne permettent pas de couvrir les dépenses d'exploitation, d'entretien et de gestion, les signataires verseront à la Société, en proportion de leurs quotes-parts, les sommes que le Comité jugera nécessaires à la couverture du déficit.

(f) Le Comité prendra les mesures appropriées pour sanctionner les retards de trois mois ou plus dans les paiements prévus au présent Article.

ARTICLE 10

(a) Tous les contrats attribués par la Société ou par tout autre signataire en vertu d'une autorisation du Comité, et relatifs à l'étude, à la mise au point et à la fourniturede matériel pour le segment spatial devront, sauf si le Comité en décide autrement, être fondés sur les réponses aux demandes de prix ou aux appels d'offres. Ces demandes de prix ou ces appels d'offres sont adressés à des personnes ou à des organisations choisies parmi celles indiquées au Comité par les signataires et qui sont qualifiés pour exécuter les travaux prévus dans le contrat propose.

(b) Pour les contrats dont le montant est supérieur à 125.000 dollars des Etats-Unis, l'envoi par la Société de demandes de propositions ou d'appels d'offres devra être fait

conformément aux conditions que le Comité pourra déterminer. La Société tiendra le Comité pleinement informé des décisions prises relatives à ces contrats.

(c) La Société consultera le Comité avant tout envoi de demandes de propositions et d'appels d'offres concernant les contrats d'études, de mise au point et de fourniture de matériel pour le secteur spatial dont la valeur est estimée supérieure à 500.000 dollars des Etats-Unis. S'il résulte, du dépouillement des réponses aux demandes de propositionset aux appels d'offres, que la Société desire placer un contrat d'un montant supérieur à 500.000 dollars des Etats-Unis, celle-ci devra soumettre les résultats du dépouillement et ses recommandations au Comité. L'approbation par le Comité devra être donnée avant attribution d'un tel contrat, que celui-ci soit placé par la Société en tant que gérant ou par tout autre signataire en vertu d'une autorisation du Comité.

(d) Le Comité approuvera le programme de lancement de satellites et des services associés, la source de lancement, et les arrangements relatifs aux contrats.

(e) Sauf si le Comité en dispose autrement, et sous réserve des paragraphes (c) et (d) du présent Article, tous les entrepreneurs sont choisis par la Société et tous les contrats sont passés au nom de la Société, exécutés et administrés par elle en tant que gérant.

(f) Sauf si le Comité en dispose autrement, tous les contrats et sous-contrats passés pour les travaux de conception, de mise au point et pour la fourniture de matériel destiné au secteur spatial contiennent des dispositions appropriées prévoyant que tous les renseignements, inventions et données techniques découlant directement de tout travail effectué conformément à ces contrats (à l'exclusion des renseignements, des inventions et des données techniques relatives aux lanceurs et aux lancements) sont

communiqués au Comité et peuvent, aux termes des dispositions provisoires actuelles comme à ceux des dispositions définitives, être utilisés seulement pour la conception, la mise au point, la fabrication et l'utilisation de matériel et de composants destinés au secteur spatial établi au titre des présentes dispositions provisoires ou au titre des dispositions définitives qui succèderont aux dispositions provisoires, sans paiement de redevance, par chaque signataire ou par chaque personne relevant d 'un signataire ou du Gouvernement qui a désigné ce signataire.

(g) Sauf s'il en décide autrement, le Comité veille à ce que soient inscrites, autant que possible, dans tous les contrats passés pour les travaux de conception et de mise au point, des dispositions propres à assurer que les renseignements, inventions et données techniques appartenant à l 'entrepreneur bénéficiaire
des contrats et à ses sous-traitants, et qui découlent directement des travaux effectués aux termes de ces contrats, puissent être utilisés à des conditions justes et raisonnables par tout signataire ou toute personne relevant d'un signataire ou du Gouvernement qui a désigné ce signataire, pourvu que cette utilisation soit nécessaire et ce, dans la mesure requise pour l'exercice du droit prévu au paragraphe (f) ci-dessus.

(h) Les dispositions du présent Article ne sont pas applicables aux contrats pour la conception, la mise au point, la construction et la création du secteur spatial auxquels la Société est partie à la date de l'ouverture de l'accord à la signature. Sous réserve des dispositions de l'Article 4 (c) de cet Accord, de tels contrats seront reconnus pour raisons budgétaires par le Comité comme des obligations continues.

ARTICLE 11

Tout signataire tient les registres, archives, pièces justificatives et comptes nécessaires relatifs à toutes les dépenses pour lesquelles il est autorisé à être rembourse en vertu du présent Accord Spécial pour la conception, la mise au point, la construction, la mise en place, l'entretien et l'exploitation du secteur spatial, et les soumet à intervalles raisonnables à l'inspection des membres du Comité.

ARTICLE 12

Outre les fonctions déjà précisées au présent Accord Spécial, la Société, en sa qualité d'organe exécutif conformément à l'Article VIII de l'Accord:

(a) prépare et soumet au Comité les programmes et budgets annuels;

(b) lui recommande le ou les types de secteur spatial à établir;

(c) prépare, dirige, organise les recherches et travaux de conception et de mise au point pour l'amélioration du secteur spatial, et y participe;

(d) exploite le secteur spatial et en assure l'entretien;

(e) fournit au Comité les renseignements demandés par tout représentant au Comité dans le but de s'acquitter de ses responsabilités en tant que tel;

(f) organise la participation de techniciens, choisis par le Comité avec l'approbation de la Société parmi les personnes désignées par les signataires, à l'examen des projets et à l'établissement des spécifications relatives au matériel destiné au secteur spatial;

(g) s'efforce d'obtenir que les renseignements, inventions et données techniques découlant directement des travaux financés en commun aux termes des contrats passés avant la date où l'Accord es ouvert à la signature soient communiqués à tout signataire et mises gratuitement à la disposition de celui-ci ou de toute personne relevant d'un signataire ou du gouvernement qui l'a désigné, en vue de la conception, de la mise au point, de la fabrication et de l'utilisation du matériel et des composants du secteur spatial.

ARTICLE 13

La Société en tant que signataire ou en tant qu'organe exécutif, non plus qu'aucun autre signataire ne sera responsable envers les autres signataires pour les dommages résultant d'une défaillance ou d'un arrêt dans le fonctionnement d'un satellite au moment du lancement ou après celui-ci, ou d'une défaillance ou d'un arrêt dans le fonctionnement de toute autre partie du secteur spatial.

ARTICLE 14

Des dispositions seront prises en vertu desquelles les différends d'ordre juridique s'élevant à propos du présent Accord Spécial ou à propos des droits et obligations des signataires, pourront, s'ils ne sont pas réglés autrement, être soumis au jugement d'un tribunal impartial à établir conformément à ces mêmes dispositions et qui tranchera ces questions conformement aux principes généraux du droit. A cette fin, un groupe d'experts juridiques, nommés par les signataires et par les signataires prévus et indiqués dans la liste anflexée à l'Accord Spécial quand celui-ci a été ouvert à la signature, proposera un projet d'accord supplémen-taire contenant les dispositions susvisées. Après examen du projet, les signataires conclueront un Accord additionnel à cette fin dans le délai de trois mois après la date où le présent Accord Spécial est ouvert à la signature. Cet Accord

additionnel s'appliquera également de façon obligatoire à tous futurs signataires du présent Accord Spécial.

ARTICLE 15

Toute proposition d'amendement au présent Accord Spécial est soumise en premier lieu au Comité. Si ce dernier en recommande l'adoption, elle entre en vigueur à l'égard de tous les signataires lorsque les notifications d'approbation auront été déposées auprès du Gouvernement des Etats-Unis d'Amérique par deux tiers des signataires; toutefois aucun amendement ne peut imposer à l'un quelconque des signataires, sans son consentement, d'obligations financières supplémentaires.

ARTICLE 16

Le présent Accord Spécial entrera en vigueur pour chaque signataire, au jour de sa signature, à condition que l'Accord soit déjà entré en vigueur à l'égard du Gouvernement signataire ou ayant désigné le signataire en question, ou qu'il ait été provisoirement appliqué par lui. Il restera en vigueur aussi longtemps que l'Accord.

IN WITNESS WHEREOF the undersigned duly authorized thereto have signed this Special Agreement. D O N E a t Washington this twentieth day of August, 1964, in the English and French languages, both texts being equally authoritative, in a single original, which shall be deposited in the archives of the Government of the United States of America, which shall transmit a certified copy to each signatory or acceding Government and to the Government of each State which is a member of the International Telecommunication Union.

EN FOI DE QUOI les soussignés dôment autorisés ont apposé leur signature au présent Accord Spécial.

FAIT à Washington le vingt août 1964, en langues anglaise et française, les deux textes faisant également foi, en un seul original qui sera déposé dans les archives du Gouvernement des Etats-Unis d'Amérique, lequel en transmettra une copie certifiée conforme à chaque signataire ou gouvernement adhérent et au gouvernement de chaque Etat membre de l'Union Internationale des Télécommunications.

Overseas Telecommunications Commission (Australia):

Bundesministerium für Verkehr und Elektrizitätswirtschaft,
Generaldirektion für die Post- und Telegraphenverwaltung:

Régie des Télègraphes et Téléphones:

Canadian Overseas Telecommunication Corporation:

Generaldirektoratet for Post og Telegrafvesenet:

Government of the French Republic:
Gouvernement de la République Française:

Deutsche Bundespost:

An Roinn Poist Agus Telegrafa:

Kokusai Denshin Denwa Company Ltd.:

Government of the Kingdom of the Netherlands:
Gouvernement du Royaume des Pays-Bas:

Telegrafstyret:

Administraçäo Geral dos Correios, Telégrafos e Telefones:

Government of the State of Spain:
Gouvernement de l'Etat Espagnol:

Kungl. Telestyrelsen:

Direction Générale des PTT:

Her Britannic Majesty's Postmaster General:

Communications Satellite Corporation:

Government of the Vatican Cityy State:
Gouvernement de la Cité du Vatican:

ANNEX

LIST OF PROSPECTIVE SIGNATORIES TO THE SPECIAL AGREEMENT

Country	Name of Signatory	Quota
Australia	Overseas Telecommunications Commission (Australia)	2.75
Austria	Bundesministerium für Verkehr und Elektrizitätswirtschaft, Generaldirektion für die Post- und Telegraphenverwaltung	0.2
Belgium	Régie des Télègraphes et Téléphones	1.1
Canada	Canadian Overseas Telecommunication Corporation	3.75
Denmark	Generaldirektoratet for Post og Telegrafvesenet	0.4
France	Government of the French Republic	6.1
Germany	Deutsche Bundespost	6.1
Ireland	An Roinn Poist Agus Telegrafa	0.35
Italy	to be designated	2.2
Japan	Kokusai Denshin Denwa Company Ltd.	2.0
Netherlands	Government of the Kingdom of the Netherlands	1.0

Norway	Telegrafstyret	0.4
Portugal	Administração Geral dos Correios, Telégrafos e Telefones	0.4
Spain	Government of the State of Spain	1.1
Sweden	Kungl. Telestyrelsen	0.7
Switzerland	Direction Générale des PTT	2.0
United Kingdom of Great Britain and Northern Ireland	Her Britannic Majesty's Postmaster General	8.4
United States of America	Communications Satellite Corporation	61.0
Vatican City	Government of the Vatican City State	0.05

ANNEXE

LISTE DES SIGNATAIRES PREVUS DE L'ACCORD SPECIAL

Pays	Nom du signataire	Quote-part
Allemagne	Deutsche Bundespost	6,1
Australie	Overseas Telecommunications Commission (Australia)	2,75
Autriche	Bundesministerium für Verkehr und Elektrizitätswirtschaft,	0,2

	Generaldirektion für die Post- und Telegraphenverwaltung	
Belgique	Régie des Télègraphes et Téléphones	1,1
Canada	Canadian Overseas Telecommunication Corporation	3,75
Danemark	Generaldirektoratet for Post og Telegrafvesenet	0,4
Espagne	Gouvernement de l'Etat Espagnol	1,1
Etats-Unis d'Amerique	Communications Satellite Corporation	61,0
Etat de la Cité du Vatican	Gouvernement de la Cité du Vatican	0,05
France	Gouvernement de la République Française	6,1
Irlande	An Roinn Poist Agus Telegrafa	0,35
Italie	à désigner	2,2

Japon	Kokusai Denshin Denwa Company Ltd.	2,0
Norvège	Telegrafstyret	0,4
Pays-Bas	Gouvernement du Royaume des Pays-Bas	1,0
Portugal	Administração Geral dos Correios, Telégrafos e Telefones	0,4
Royaum-Uni	Her Britannic Majesty's Post-master General	8,4
Suède	Kungl. Telestyrelsen	0,7
Suisse	Direction Générale des PTT	2,0

Note by the Department of State

Signatories to
the Special Agreement
Opened for signature at Washington August 20, 1964*

Overseas Telecommunications Commission (Australia):
A. E. SHEPHERD *August 24th 1964*

Canadian Overseas Telecommunication Corporation:
D.F. BOWIE
C.S. GREGORY

Generaldirektoratet for Post og Telegrafvesenet:
E.KROG-MEYER

Government of the French Republic:
BRUNO DE LEUSSE

Deutsche Bundespost:
DR. KIRCHNER *21 Sept. 1964*

Kokusai Denshin Denwa Company Ltd.:
KATSUZO OHNO

Government of the Kingdom of the Netherlands:
C.SCHURMANN

Telegrafstyret:
HANS ENGEN *31st August 1964*

Government of the State of Spain:
MERRY DEL VAL

Direction Gènèrale des PTT:
M. GELZER *Sept 16th 1964*

Her Britannic Majesty's Postmaster General:
ROBERT HARVEY

Communications Satellite Corporation:
LEO D. WELCH

Government of the Vatican City State:
LUCIANO STORERO

*Signed August 20 1964, unless otherwise indicated.

Agreement Relating to the International Telecommunications Satellite Organization "Intelsat" done Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971)

MULTILATERAL
International Telecommunications Satellite Organization (INTELSAT)

Agreement, with annexes, done at Washington August 20, 1971;
Entered into force February 12, 1973.
And operating agreement, with annex
Concluded by certain Governments and entities designated by Governments;
Done at Washington August 20, 1971;
Entered into force February 12, 1973.

AGREEMENT RELATING TO THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION "INTELSAT"

PREAMBLE

The States Parties to this Agreement,

Considering the principle set forth in Resolution 1721 (XVI) of the General Assembly of the United Nations that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis,

Considering the relevant provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies,[1] and in particular Article I, which states that outer space shall be used for the benefit and in

---

[1]TIAS 6347; 18 UST 2410.

the interests of all countries,

Noting that pursuant to the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System and the related Special Agreement, a global commercial telecommunications satellite system has been established,

Desiring to continue the development of this telecommunications satellite system with the aim of achieving a single global commercial telecommunications satellite system as part of an improved global telecommunications network which will provide expanded telecommunications services to all areas of the world and which will contribute to world peace and understanding,

Determined, to this end, to provide, for the benefit of all mankind, through the most advanced technology available, the most efficient and economic facilities possible consistent with the best and most equitable use of the radio frequency spectrum and of orbital space,

Believing that satellite telecommunications should be organized in such a way as to permit all peoples to have access to the global satellite system and those States members of the International Telecommunication Union so wishing to invest in the system with consequent participation in the design, development, construction, including the provision of equipment, establishment, operation, maintenance and ownership of the system,

Pursuant to the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System,[2]

Agree as follows:

---

[2]TIAS 5646; 15 UST 1705.

ARTICLE I

(Definitions)

For the purposes of this Agreement:

(a) "Agreement" means the present agreement, including its Annexes but excluding all titles of Articles, opened for signature by Governments at Washington on August 20, 1971, by which the international telecommunications satellite organization "INTELSAT" is established;

(b) "Operating Agreement" means the agreement, including its Annex but excluding all titles of Articles, opened for signature at Washington on August 20, 1971, by Governments or telecommunications entities designated by Governments in accordance with the provisions of this Agreement;

(c) "Interim Agreement" means the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System signed by Governments at Washington on August 20, 1964;

(d) "Special Agreement" means the agreement signed on August 20, 1964, by Governments or telecommunications entities designated by Governments, pursuant to the provisions of the Interim Agreement;

(e) "Interim Communications Satellite Committee" means the Committee established by Article IV of the Interim Agreement;

(f) "Party" means a State for which the Agreement has entered into force or been provisionally applied;

(g) "Signatory" means a Party, or the telecommunications entity designated by a Party, which has signed the Operating Agreement and for which it has entered into force or been provisionally applied;

(h) "Space segment" means the telecommunications satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of these satellites;

(i) "INTELSAT space segment" means the space segment owned by INTELSAT;

(j) "Telecommunications" means any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, optical or other electromagnetic systems;

(k) "Public telecommunications services" means fixed or mobile telecommunications services which can be provided by satellite and which are available for use by the public, such as telephony, telegraphy, telex, facsimile, data transmission, transmission of radio and television programs between approved earth stations having access to the INTELSAT space segment for further transmission to the public, and leased circuits for any of these purposes; but excluding those mobile services of a type not provided under the Interim Agreement and the Special Agreement prior to the opening for signature of this Agreement, which are provided through mobile stations operating directly to a satellite which is designed, in whole or in part, to provide services relating to the safety or flight control of aircraft or to aviation or maritime radio navigation;

(l) "Specialized telecommunications services" means telecommunications services which can be provided by satellite, other than those defined in paragraph (k) of this

Article, including, but not limited to, radio navigation services, broadcasting satellite services for reception by the general public, space research services, meteorological services, and earth resources services;

(m) "Property" includes every subject of whatever nature to which a right of ownership can attach, as well as contractual rights; and

(n) "Design" and "development" include research directly related to the purposes of INTELSAT.

ARTICLE II

(Establishment of INTELSAT)

(a) With full regard for the principles set forth in the Preamble to this Agreement, the Parties hereby establish the international telecommunications satellite organization "INTELSAT", the main purpose of which is to continue and carry forward on a definitive basis the design, development, construction, establishment, operation and maintenance of the space segment of the global commercial telecommunications satellite system as established under the provisions of the Interim Agreement and the Special Agreement.

(b) Each State Party shall sign, or shall designate a telecommunications entity, public or private, to sign, the Operating Agreement which shall be concluded in conformity with the provisions of this Agreement and which shall be opened for signature at the same time as this Agreement. Relations between any telecommunications entity, acting as Signatory, and the Party which has designated it shall be governed by applicable domestic law.

(c) Telecommunications administrations and entities may, subject to applicable domestic law, negotiate and enter directly into appropriate traffic agreements with respect to their use of channels of telecommunications provided pursuant to this Agreement and the Operating Agreement, as well as services to be furnished to the public, facilities, divisions of revenue and related business arrangements.

ARTICLE III

(Scope of INTELSAT Activities)

(a) In continuing and carrying forward on a definitive basis activities concerning the space segment of the global commercial telecommunications satellite system referred to in paragraph (a) of Article II of this Agreement, INTELSAT shall have as its prime objective the provision, on a commercial basis, of the space segment required for international public telecommunications services of high quality and reliability to be available on a non-discriminatory basis to all areas of the world.

(b) The following shall be considered on the same basis as international public telecommunications services:

(i) domestic public telecommunications services between areas separated by areas not under the jurisdiction of the State concerned, or between areas separated by the high seas; and

(ii) domestic public telecommunications services between areas which are not linked by any terrestrial wideband facilities and which are separated by natural barriers of such an exceptional nature that they impede the viable establishment of terrestrial wideband facilities between such areas, provided that the Meeting

of Signatories, having regard to advice tendered by the Board of Governors, has given the appropriate approval in advance.

(c) The INTELSAT space segment established to meet the prime objective shall also be made available for other domestic public telecommunications services on a non-discriminatory basis to the extent that the ability of INTELSAT to achieve its prime objective is not impaired.

(d) The INTELSAT space segment may also, on request and under appropriate terms and conditions, be utilized for the purpose of specialized telecommunications services, either international or domestic, other than for military purposes, provided that:

(i) the provision of public telecommunications services is not unfavorably affected thereby; and

(ii) the arrangements are otherwise acceptable from a technical and economic point of view.

(e) INTELSAT may, on request and under appropriate terms and conditions, provide satellites or associated facilities separate from the INTELSAT space segment for:

(i) domestic public telecommunications services in territories under the jurisdiction of one or more Parties;

(ii) international public telecommunications services between or among territories under the jurisdiction of two or more Parties;

(iii) specialized telecommunications services, other than for military purposes;

provided that the efficient and economic operation of the INTELSAT space segment is not unfavorably affected in any way.

(f) The utilization of the INTELSAT space segment for specialized telecommunications services pursuant to paragraph (d) of this Article, and the provision of satellites or associated facilities separate from the INTELSAT space segment pursuant to paragraph (e) of this Article, shall be covered by contracts entered into between INTELSAT and the applicants concerned. The utilization of INTELSAT space segment facilities for specialized telecommunications services pursuant to paragraph (d) of this Article, and the provision of satellites or associated facilities separate from the INTELSAT space segment for specialized telecommunications services pursuant to subparagraph (e) (iii) of this Article, shall be in accordance with appropriate authorizations, at the planning stage, of the Assembly of Parties pursuant to subparagraph (c) (iv) of Article VII of this Agreement. Where the utilization of INTELSAT space segment facilities for specialized telecommunications services would involve additional costs which result from required modifications to existing or planned INTELSAT space segment facilities, or where the provision of satellites or associated facilities separate from the INTELSAT space segment is sought for specialized telecommunications services as provided for in subparagraph (e) (iii) of this Article, authorization pursuant to subparagraph (c) (iv) of Article VII of this Agreement shall be sought from the Assembly of Parties as soon as the Board of Governors is in a position to advise the Assembly of Parties in detail regarding the estimated cost of the proposal, the benefits to be derived, the technical or other problems involved and the probable effects on present or foreseeable INTELSAT services. Such authorization shall be obtained before the procurement process for the facility or facilities involved is initiated. Before making such authorizations, the Assembly

of Parties, in appropriate cases, shall consult or ensure that there has been consultation by INTELSAT with Specialized Agencies of the United Nations directly concerned with the provision of the specialized telecommunications services in question.

ARTICLE IV

(Juridical Personality)

(a) INTELSAT shall possess juridical personality. It shall enjoy the full capacity necessary for the exercise of its functions and the achievement of its purposes, including the capacity to:

(i) conclude agreements with States or international organizations;

(ii) contract;

(iii) acquire and dispose of property; and

(iv) be a party to legal proceedings.

(b) Each Party shall take such action as is necessary within its jurisdiction for the purpose of making effective in terms of its own law the provisions of this Article.

ARTICLE V

(Financial Principles)

(a) INTELSAT shall be the owner of the INTELSAT space segment and of all other property acquired by INTELSAT. The financial interest in INTELSAT of each Signatory shall be equal to the amount arrived at by the application of its investment share to the valuation effected

pursuant to Article 7 of the Operating Agreement.

(b) Each Signatory shall have an investment share corresponding to its percentage of all utilization of the INTELSAT space segment by all Signatories as determined in accordance with the provisions of the Operating Agreement. However, no Signatory, even if its utilization of the INTELSAT space segment is nil, shall have an investment share less than the minimum established in the Operating Agreement.

(c) Each Signatory shall contribute to the capital requirements of INTELSAT, and shall receive capital repayment and compensation for use of capital in accordance with the provisions of the Operating Agreement.

(d) All users of the INTELSAT space segment shall pay utilization charges determined in accordance with the provisions of this Agreement and the Operating Agreement. The rates of space segment utilization charge for each type of utilization shall be the same for all applicants for space segment capacity for that type of utilization.

(e) The separate satellites and associated facilities referred to in paragraph (e) of Article III of this Agreement may be financed and owned by INTELSAT as part of the INTELSAT space segment upon the unanimous approval of all the Signatories. If such approval is withheld, they shall be separate from the INTELSAT space segment and shall be financed and owned by those requesting them. In this case the financial terms and conditions set by INTELSAT shall be such as to cover fully the costs directly resulting from the design, development, construction and provision of such separate satellites and associated facilities as well as an adequate part of the general and administrative costs of INTELSAT.

ARTICLE VI

(Structure of INTELSAT)

(a) INTELSAT shall have the following organs:

(i) the Assembly of Parties;

(ii) the Meeting of Signatories;

(iii) the Board of Governors; and

(iv) an executive organ, responsible to the Board of Governors.

(b) Except to the extent that this Agreement or the Operating Agreement specifically provides otherwise, no organ shall make determinations or otherwise act in such a way as to alter, nullify, delay or in any other manner interfere with the exercise of a power or the discharge of a responsibility or a function attributed to another organ by this Agreement or the Operating Agreement.

(c) Subject to paragraph (b) of this Article, the Assembly of Parties, the Meeting of Signatories and the Board of Governors shall each take note of and give due and proper consideration to any resolution, recommendation or view made or expressed by another of these organs acting in the exercise of the responsibilities and functions attributed to it by this Agreement or the Operating Agreement.

ARTICLE VII

(Assembly of Parties)

(a) The Assembly of Parties shall be composed of all the Parties and shall be the principal organ of INTELSAT.

(b) The Assembly of Parties shall give consideration to those aspects of INTELSAT which are primarily of interest to the Parties as sovereign States. It shall have the power to give consideration to general policy and Long-term objectives of INTELSAT consistent with the principles, purposes and scope of activities of INTELSAT, as provided for in this Agreement. In accordance with paragraphs (b) and (c) of Article VI of this Agreement, the Assembly of Parties shall give due and proper consideration to resolutions, recommendations and views addressed to it by the Meeting of Signatories or the Board of Governors.

(c) The Assembly of Parties shall have the following functions and powers:

(i) in the exercise of its power of considering general policy and long-term objectives of INTELSAT, to formulate its views or make recommendations, as it may deem appropriate, to the other organs of INTELSAT;

(ii) to determine that measures should be taken to prevent the activities of INTELSAT from conflicting with any general multilateral convention which is consistent with this Agreement and which is adhered to by at least two-thirds of the Parties;

(iii) to consider and take decisions on proposals for amending this Agreement in accordance with Article XVII of this Agreement and to propose, express its views and make recommendations on amendments to the Operating Agreement;

(iv) to authorize, through general rules or by specific determinations, the utilization of the INTELSAT space segment and the provision of satellites

and associated facilities separate from the INTELSAT space segment for specialized telecommunications services within the scope of activities referred to in paragraph (d) and subparagraph (e) (iii) of Article III of this Agreement;

(v) to review, in order to ensure the application of the principle of non-discrimination, the general rules established pursuant to subparagraph (b) (v) of Article VIII of this Agreement;

(vi) to consider and express its views on the reports presented by the Meeting of Signatories and the Board of Governors concerning the implementation of general policies, the activities and the long-term program of INTELSAT;

(vii) to express, pursuant to Article XIV of this Agreement, its findings in the form of recommendations, with respect to the intended establishment, acquisition or utilization of space segment facilities separate from the INTELSAT space segment facilities;

(viii) to take decisions, pursuant to subparagraph (b) (i) of Article XVI of this Agreement, in connection with the withdrawal of a Party from INTELSAT;

(ix) to decide upon questions concerning formal relationships between INTELSAT and States, whether Parties or not, or international organizations;

(x) to consider complaints submitted to it by Parties;

(xi) to select the legal experts referred to in Article 3 of Annex C to this Agreement;

(xii) to act upon the appointment of the Director General in accordance with Articles XI and XII of this Agreement;

(xiii) pursuant to Article XII of this Agreement, to adopt the organizational structure of the executive organ; and

(xiv) to exercise any other powers coming within the purview of the Assembly of Parties according to the provisions of this Agreement.

(d) The first ordinary meeting of the Assembly of Parties shall be convened by the Secretary General within one year following the date on which this Agreement enters into force. Ordinary meetings shall thereafter be scheduled to be held every two years. The Assembly of Parties, however, may decide otherwise from meeting to meeting.

(e) (i) In addition to the ordinary meetings provided for in paragraph (d) of this Article, the Assembly of Parties may meet in extraordinary meetings, which may be convened either upon request of the Board of Governors acting pursuant to the provisions of Article XIV or XVI of this Agreement, or upon the request of one or more Parties which receives the support of at least one-third of the Parties including the requesting Party or Parties.

(ii) Requests for extraordinary meetings shall state the purpose of the meeting and shall be addressed in writing to the Secretary General or the Director General, who shall arrange for the

meeting to be held as soon as possible and in accordance with the rules of procedure of the Assembly of Parties for convening such meetings.

(f) A quorum for any meeting of the Assembly of Parties shall consist of representatives of a majority of the Parties. Each Party shall have one vote. Decisions on matters of substance shall be taken by an affirmative vote cast by at least two-thirds of the Parties whose representatives are present and voting. Decisions on procedural matters shall be taken by an affirmative vote cast by a simple majority of the Parties whose representatives are present and voting. Disputes whether a specific matter is procedural or substantive shall be decided by a vote cast by a simple majority of the Parties whose representatives are present and voting.

(g) The Assembly of Parties shall adopt its own rules of procedure, which shall include provision for the election of a Chairman and other officers.

(h) Each Party shall meet its own costs of representation at a meeting of the Assembly of Parties. Expenses of meetings of the Assembly of Parties shall be regarded as an administrative cost of INTELSAT for the purpose of Article 8 of the Operating Agreement.

ARTICLE VIII

(Meeting of Signatories)

(a) The Meeting of Signatories shall be composed of all the Signatories. In accordance with paragraphs (b) and (c) of Article VI of this Agreement, the Meeting of Signatories shall give due and proper consideration to resolutions, recommendations and views addressed to it by the Assembly of Parties or the Board of Governors.

(b) The Meeting of Signatories shall have the following functions and powers:

(i) to consider and express its views to the Board of Governors on the annual report and annual financial statements submitted to it by the Board of Governors;

(ii) to express its views and make recommendations on proposed amendments to this Agreement pursuant to Article XVII of this Agreement and to consider and take decisions, in accordance with Article 22 of the Operating Agreement and taking into account any views and recommendations received from the Assembly of Parties or the Board of Governors, on proposed amendments to the Operating Agreement which are consistent with this Agreement;

(iii) to consider and express its views regarding reports on future programs, including the estimated financial implications of such programs, submitted by the Board of Governors;

(iv) to consider and decide on any recommendation made by the Board of Governors concerning an

increase in the ceiling provided for in Article 5 of the Operating Agreement;

(v) to establish general rules, upon the recommendation of and for the guidance of the Board of Governors, concerning:

(A) the approval of earth stations for access to the INTELSAT space segment,

(B) the allotment of INTELSAT space segment capacity, and

(C) the establishment and adjustment of the rates of charge for utilization of the INTELSAT space segment on a non-discriminatory basis;

(vi) to take decisions pursuant to Article XVI of this Agreement in connection with the withdrawal of a Signatory from INTELSAT;

(vii) to consider and express its views on complaints submitted to it by Signatories directly or through the Board of Governors or submitted to it through the Board of Governors by users of the INTELSAT space segment who are not Signatories;

(viii) to prepare and present to the Assembly of Parties, and to the Parties, reports concerning the implementation of general policies, the activities and the long-term program of INTELSAT;

(ix) to take decisions concerning the approval referred to in subparagraph (b)(ii) of Article III

of this Agreement;

(x) to consider and express its views on the report on permanent management arrangements submitted by the Board of Governors to the Assembly of Parties pursuant to paragraph (g) of Article XII of this Agreement;

(xi) to make annual determinations for the purpose of representation on the Board of Governors in accordance with Article IX of this Agreement; and

(xii) to exercise any other powers coming within the purview of the Meeting of Signatories according to the provisions of this Agreement or the Operating Agreement.

(c) The first ordinary meeting of the Meeting of Signatories shall be convened by the Secretary General at the request of the Board of Governors within nine months after the entry into force of this Agreement. Thereafter an ordinary meeting shall be held in every calendar year.

(d) (i) In addition to the ordinary meetings provided for in paragraph (c) of this Article, the Meeting of Signatories may hold extraordinary meetings, which may be convened either upon the request of the Board of Governors or upon the request of one or more Signatories which receives the support of at least one-third of the Signatories including the requesting Signatory or Signatories.

(ii) Requests for extraordinary meetings shall state the purpose for which the meeting is required

and shall be addressed in writing to the Secretary General or the Director General, who shall arrange for the meeting to be held as soon as possible and in accordance with the rules of procedure of the Meeting of Signatories for convening such meetings. The agenda for an extraordinary meeting shall be restricted to the purpose or purposes for which the meeting was convened.

(e) A quorum for any meeting of the Meeting of Signatories shall consist of representatives of a majority of the Signatories. Each Signatory shall have one vote. Decisions on matters of substance shall be taken by an affirmative vote cast by at least two-thirds of the Signatories whose representatives are present and voting. Decisions on procedural matters shall be taken by an affirmative vote cast by a simple majority of the Signatories whose representatives are present and voting. Disputes whether a specific matter is procedural or substantive shall be decided by a vote cast by a simple majority of the Signatories whose representatives are present and voting.

(f) The Meeting of Signatories shall adopt its own rules of procedure, which shall include provision for the election of a Chairman and other officers.

(g) Each Signatory shall meet its own costs of representation at meetings of the Meeting of Signatories. Expenses of meetings of the Meeting of Signatories shall be regarded as an administrative cost of INTELSAT for the purpose of Article 8 of the Operating Agreement.

ARTICLE IX

(Board of Governors: Composition and Voting)

(a) The Board of Governors shall be composed of:

(i) one Governor representing each Signatory whose investment share is not less than the minimum investment share as determined in accordance with paragraph (b) of this Article;

(ii) one Governor representing each group of any two or more Signatories not represented pursuant to subparagraph (i) of this paragraph whose combined investment share is not less than the minimum investment share as determined in accordance with paragraph (b) of this Article and which have agreed to be so represented;

(iii) one Governor representing any group of at least five Signatories not represented pursuant to subparagraph (i) or (ii) of this paragraph from any one of the regions defined by the Plenipotentiary Conference of the International Telecommunication Union, held at Montreux in 1965, regardless of the total investment shares held by the Signatories comprising the group. However, the number of Governors under this category shall not exceed two for any region defined by the Union or five for all such regions.

(b) (i) During the period between the entry into force of this Agreement and the first meeting of the Meeting of Signatories, the minimum investment share that will entitle a Signatory or group of Signatories to be represented on the Board of Governors shall be equal to the investment share of the Signatory holding position thirteen in the list of the descending order of size of initial investment shares of all

the Signatories.

(ii) Subsequent to the period mentioned in subparagraph (i) of this paragraph, the Meeting of Signatories shall determine annually the minimum investment share that will entitle a Signatory or group of Signatories to be represented on the Board of Governors. For this purpose, the Meeting of Signatories shall be guided by the desirability of the number of Governors being approximately twenty, excluding any selected pursuant to subparagraph (a) (iii) of this Article.

(iii) For the purpose of making the determinations referred to in subparagraph (ii) of this paragraph, the Meeting of Signatories shall fix a minimum investment share according to the following provisions:

(A) if the Board of Governors, at the time the determination is made, is composed of twenty, twenty-one or twenty-two Governors, the Meeting of Signatories shall fix a minimum investment share equal to the investment share of the Signatory which, in the list in effect at that time, holds the same position held in the list in effect when the previous determination was made, by the Signatory selected on that occasion,

(B) if the Board of Governors, at the time the determination is made, is composed of more than twenty-two Governors, the Meeting of Signatories shall fix a minimum investment share equal to the investment

share of a Signatory which, in the list in effect at that time, holds a position above the one held in the list in effect when the previous determination was made, by the Signatory selected on that occasion,

(C) if the Board of Governors, at the time the determination is made, is composed of less than twenty Governors, the Meeting of Signatories shall fix a minimum investment share equal to the investment share of a Signatory which, in the list in effect at that time, holds, a position below the one held in the list in effect when the previous determination was made, by the Signatory selected on that occasion.

(iv) If, by applying the ranking method set forth in subparagraph (iii) (B) of this paragraph, the number of Governors would be less than twenty, or, by applying that set forth in subparagraph (iii) (C) of this paragraph, would be more than twenty-two, the Meeting of Signatories shall determine a minimum investment share that will better ensure that there will be twenty Governors.

(v) For the purpose of the provisions of subparagraphs (iii) and (iv) of this paragraph, the Governors selected in accordance with sub-paragraph (a) (iii) of this Article shall not be taken into consideration.

(vi) For the purpose of the provisions of this paragraph, investment shares determined pursuant to subparagraph (c) (ii) of Article 6 of the Operating Agreement shall take effect from

the first day of the ordinary meeting of the Meeting of Signatories following such determination.

(c) Whenever a Signatory or group of Signatories fulfills the requirements for representation pursuant to subparagraph (a) (i), (ii) or (iii) of this Article, it shall be entitled to be represented on the Board of Governors. In the case of any group of Signatories referred to in subparagraph (a) (iii) of this Article, such entitlement shall become effective upon receipt by the executive organ of a written request from such group, provided, however, that the number of such groups represented on the Board of Governors has not, at the time of receipt of any such written request, reached the applicable limitations prescribed in subparagraph (a) (iii) of this Article. If at the time of receipt of any such written request representation on the Board of Governors pursuant to subparagraph (a) (iii) of this Article has reached the applicable limitations prescribed therein, the group of Signatories may submit its request to the next ordinary meeting of the Meeting of Signatories for a determination pursuant to paragraph (d) of this Article.

(d) Upon the request of any group or groups of Signatories referred to in subparagraph (a) (iii) of this Article, the Meeting of Signatories shall annually determine which of these groups shall be or continue to be represented on the Board of Governors. For this purpose, if such groups exceed two for any one region defined by the International Telecommunication Union, or five for all such regions, the Meeting of Signatories shall first select the group which has the highest combined investment share from each such region from which there has been submitted a written request pursuant to paragraph (c) of this Article. If the number of groups so selected is less than five, the remaining groups which are to be represented shall be selected in decreasing order of the combined investment shares of each

group, without exceeding the applicable limitations prescribed in subparagraph (a) (iii) of this Article.

(e) In order to ensure continuity within the Board of Governors, every Signatory or group of Signatories represented pursuant to subparagraph (a) (i), (ii) or (iii) of this Article shall remain represented, either individually or as part of such group, until the next determination made in accordance with paragraph (b) or (d) of this Article, regardless of the changes that may occur in its or their investment shares as the result of any adjustment of investment shares. However, representation as part of a group constituted pursuant to subparagraph (a) (ii) or (iii) of this Article shall cease if the withdrawal from the group of one or more Signatories would make the group ineligible to be represented on the Board of Governors pursuant to this Article.

(f) Subject to the provisions of paragraph (g) of this Article, each Governor shall have a voting participation equal to that part of the investment share of the Signatory, or group of Signatories, he represents, which is derived from the utilization of the INTELSAT space segment for services of the following types:

(i) international public telecommunications services;

(ii) domestic public telecommunications services between areas separated by areas not under the jurisdiction of the State concerned, or between areas separated by the high seas; and

(iii) domestic public telecommunications services between areas which are not linked by any terrestrial wide-band facilities and which are separated by natural barriers of such an

exceptional nature that they impede the viable establishment of terrestrial wide-band facilities between such areas, provided that the Meeting of Signatories has given in advance the appropriate approval required by subparagraph (b) (ii) of Article III of this Agreement.

(g) For the purposes of paragraph (f) of this Article, the following arrangements shall apply:

(i) in the case of a Signatory which is granted a lesser investment share in accordance with the provisions of paragraph (d) of Article 6 of the Operating Agreement , the reduction shall apply proportionately to all types of its utilization;

(ii) in the case of a Signatory which is granted a greater investment share in accordance with the provisions of paragraph (d) of Article 6 of the Operating Agreement, the increase shall apply proportionately to all types of its utilization;

(iii) in the case of a Signatory which has an investment share of 0.05 per cent in accordance with the provisions of paragraph (h) of Article 6 of the Operating Agreement and which forms part of a group for the purpose of representation in the Board of Governors pursuant to the provisions of subparagraph (a) (ii) or (a) (iii) of this Article, its investment share shall be regarded as being derived from utilization of the INTELSAT space segment for services of the types listed in paragraph (f) of this Article; and

(iv) no Governor may cast more than forty per cent of the total voting participation of all Signatories and groups of Signatories represented on the

Board of Governors. To the extent that the voting participation of any Governor exceeds forty per cent of such total voting participation, the excess shall be distributed equally to the other Governors on the Board of Governors.

(h) For the purposes of composition of the Board of Governors and calculation of the voting participation of Governors, the investment shares determined pursuant to subparagraph (c) (ii) of Article 6 of the Operating Agreement shall take effect from the first day of the ordinary meeting of the Meeting of Signatories following such determination.

(i) A quorum for any meeting of the Board of Governors shall consist of either a majority of the Board of Governors, which majority shall have at least two-thirds of the total voting participation of all Signatories and groups of Signatories represented on the Board of Governors, or else the total number constituting the Board of Governors minus three, regardless of the amount of voting participation they represent.

(j) The Board of Governors shall endeavor to take decisions unanimously. However, if it fails to reach unanimous agreement, it shall take decisions:

(i) on all substantive questions, either by an affirmative vote cast by at least four Governors having at least two-thirds of the total voting participation of all Signatories and groups of Signatories represented on the Board of Governors taking into account the distribution of the excess referred to in subparagraph (g) (iv) of this Article, or else by an affirmative vote cast by at least the total number constituting the Board of Governors minus three, regardless of the amount of voting participation they

represent;

(ii) on all procedural questions, by an affirmative vote representing a simple majority of Governors present and voting, each having one vote.

(k) Disputes whether a specific question is procedural or substantive shall be decided by the Chairman of the Board of Governors. The decision of the Chairman may be overruled by a two-thirds majority of the Governors present and voting, each having one vote.

(l) The Board of Governors, if it deems appropriate, may create advisory committees to assist it in the performance of its responsibilities.

(m) The Board of Governors shall adopt its own rules of procedure, which shall include the method of election of a Chairman and such other officers as may be required. Notwithstanding the provisions of paragraph (j) of this Article, such rules may provide for any method of voting in the election of officers which the Board of Governors deems appropriate.

(n) The first meeting of the Board of Governors shall be convened in accordance with paragraph 2 of the Annex to the Operating Agreement. The Board of Governors shall meet as often as is necessary but at least four times a year.

ARTICLE X

(Board of Governors: Functions)

(a) The Board of Governors shall have the responsibility for the design, development, construction, establishment, operation and maintenance of the INTELSAT space segment and, pursuant to this Agreement, the Operating Agreement

and such determinations that in this respect may have been made by the Assembly of Parties pursuant to Article VII of this Agreement, for carrying out any other activities which are undertaken by INTELSAT. To discharge the foregoing responsibilities, the Board of Governors shall have the powers and shall exercise the functions coming within its purview according to the provisions of this Agreement and the Operating Agreement, including:

(i) adoption of policies, plans and programs in connection with the design, development, construction, establishment, operation and maintenance of the INTELSAT space segment and, as appropriate, in connection with any other activities which INTELSAT is authorized to undertake;

(ii) adoption of procurement procedures, regulations, terms and conditions, consistent with Article XIII of this Agreement, and approval of procurement contracts;

(iii) adoption of financial policies and annual financial statements, and approval of budgets;

(iv) adoption of policies and procedures for the acquisition, protection and distribution of rights in inventions and technical information, consistent with Article 17 of the Operating Agreement;

(v) formulation of recommendations to the Meeting of Signatories in relation to the establishment of the general rules referred to in subparagraph (b) (v) of Article VIII of this Agreement;

(vi) adoption of criteria and procedures, in

accordance with such general rules as may have been established by the Meeting of Signatories, for approval of earth stations for access to the INTELSAT space segment, for verification and monitoring of performance characteristics of earth stations having access, and for coordination of earth station access to and utilization of the INTELSAT space segment;

(vii) adoption of terms and conditions governing the allotment of INTELSAT space segment capacity, in accordance with such general rules as may have been established by the Meeting of Signatories;

(viii) periodic establishment of the rates of charge for utilization of the INTELSAT space segment, in accordance with such general rules as may have been established by the Meeting of Signatories;

(ix) action as may be appropriate, in accordance with the provisions of Article 5 of the Operating Agreement, with respect to an increase in the ceiling provided for in that Article;

(x) direction of the negotiation with the Party in whose territory the headquarters of INTELSAT is situated, and submission to the Assembly of Parties for decision thereon, of the Headquarters Agreement covering privileges, exemptions and immunities, referred to in paragraph (c) of Article XV of this Agreement;

(xi) approval of non-standard earth stations for access to the INTELSAT space segment in accordance with the general rules which may have been established by the Meeting of

Signatories;

(xii) establishment of terms and conditions for access to the INTELSAT space segment by telecommunications entities which are not under the jurisdiction of a Party, in accordance with the general rules established by the Meeting of Signatories pursuant to subparagraph (b) (v) of Article VIII of this Agreement and consistent with the provisions of paragraph (d) of Article V of this Agreement;

(xiii) decisions on the making of arrangements for overdrafts and the raising of loans in accordance with Article 10 of the Operating Agreement;

(xiv) submission to the Meeting of Signatories of an annual report on the activities of INTELSAT and of annual financial statements;

(xv) submission to the Meeting of Signatories of reports on future programs including the estimated financial implications of such programs;

(xvi) submission to the Meeting of Signatories of reports and recommendations on any other matter which the Board of Governors deems appropriate for consideration by the Meeting of Signatories;

(xvii) provision of such information as may be required by any Party or Signatory to enable that Party or Signatory to discharge its obligations under this Agreement or the Operating Agreement;

(xviii) appointment and removal from office of the Secretary General pursuant to Article XII, and of the Director General pursuant to Articles VII, XI and XII, of this Agreement;

(xix) designation of a senior officer of the executive organ to serve as Acting Secretary General pursuant to subparagraph (d) (i) of Article XII and designation of a senior officer of the executive organ to serve as Acting Director General pursuant to subparagraph (d) (i) of Article XI of this Agreement;

(xx) determination of the number, status and terms and conditions of employment of all posts on the executive organ upon the recommendation of the Secretary General or the Director General;

(xxi) approval of the appointment by the Secretary General or the Director General of senior officers reporting directly to him;

(xxii) arrangement of contracts in accordance with subparagraph (c) (ii) of Article XI of this Agreement;

(xxiii) establishment of general internal rules, and adoption of decisions in each instance, concerning notification to the International Telecommunication Union in accordance with its rules of procedure of the frequencies to be used for the INTELSAT space segment;

(xxiv) tendering to the Meeting of Signatories the advice referred to in subparagraph (b) (ii) of Article III of this Agreement;

(xxv) expression, pursuant to paragraph (c) of Article XIV of this Agreement, of its findings in the form of recommendation and the tendering of advice to the Assembly of Parties, pursuant to paragraph (d) or (e) of Article XIV of this Agreement, with respect to the intended establishment, acquisition or utilization of space segment facilities separate from the INTELSAT space segment facilities;

(xxvi) action in accordance with Article XVI of this Agreement and Article 21 of the Operating Agreement in connection with the withdrawal of a Signatory from INTELSAT; and

(xxvii) expression of its views and recommendations on proposed amendments to this Agreement pursuant to paragraph (b) of Article XVII of this Agreement, the proposal of amendments to the Operating Agreement pursuant to paragraph (a) of Article 22 of the Operating Agreement, and the expression of its views and recommendations on proposed amendments to the Operating Agreement pursuant to paragraph (b) of Article 22 of the Operating Agreement.

(b) In accordance with the provisions of paragraphs (b) and (c) of Article VI of this Agreement, the Board of Governors shall:

(i) give due and proper consideration to resolutions, recommendations and views addressed to it by the Assembly of Parties or the Meeting of Signatories; and

(ii) include in its reports to the Assembly of Parties and to the Meeting of Signatories information on

actions or decisions taken with respect to such resolutions, recommendations and views, and its reasons for such actions or decisions.

ARTICLE XI

(Director General)

(a) The executive organ shall be headed by the Director General and shall have its organizational structure implemented not later than six years after the entry into force of this Agreement.

(b) (i) The Director General shall be the chief executive and the legal representative of INTELSAT and shall be directly responsible to the Board of Governors for the performance of all management functions.

(ii) The Director General shall act in accordance with the policies and directives of the Board of Governors.

(iii) The Director General shall be appointed by the Board of Governors, subject to confirmation by the Assembly of Parties. The Director General may be removed from office for cause by the Board of Governors on its own authority.

(iv) The paramount consideration in the appointment of the Director General and in the selection of other personnel of the executive organ shall be the necessity of ensuring the highest standards of integrity, competency and efficiency. The Director General and the personnel of the executive organ shall refrain from any action incompatible with their

responsibilities to INTELSAT.

(c) (i) The permanent management arrangements shall be consistent with the basic aims and purposes of INTELSAT, its international character and its obligation to provide on a commercial basis telecommunications facilities of high quality and reliability.

(ii) The Director General, on behalf of INTELSAT, shall contract out, to one or more competent entities, technical and operational functions to the maximum extent practicable with due regard to cost and consistent with competence, effectiveness and efficiency. Such entities may be of various nationalities or may be an international corporation owned and controlled by INTELSAT. Such contracts shall be negotiated, executed and administered by the Director General.

(d) (i) The Board of Governors shall designate a senior officer of the executive organ to serve as the Acting Director General whenever the Director General is absent or is unable to discharge his duties, or if the office of Director General should become vacant. The Acting Director General shall have the capacity to exercise all the powers of the Director General pursuant to this Agreement and the Operating Agreement. In the event of a vacancy, the Acting Director General shall serve in that capacity until the assumption of office by a Director General appointed and confirmed, as expeditiously as possible, in accordance with subparagraph (b) (iii) of this Article.

(ii) The Director General may delegate such of his powers to other officers in the executive organ as may be necessary to meet appropriate requirements.

ARTICLE XII

(Transitional Management and Secretary General)

(a) As a matter of priority after entry into force of this Agreement, the Board of Governors shall:

(i) appoint the Secretary General and authorize the necessary support staff;

(ii) arrange the management services contract in accordance with paragraph (e) of this Article; and

(iii) initiate the study concerning permanent management arrangements in accordance with paragraph (f) of this Article.

(b) The Secretary General shall be the legal representative of INTELSAT until the first Director General shall have assumed office. In accordance with the policies and directives of the Board of Governors, the Secretary General shall be responsible for the performance of all management services other than those which are to be provided under the terms of the management services contract concluded pursuant to paragraph (e) of this Article including those specified in Annex A to this Agreement. The Secretary General shall keep the Board of Governors fully and currently informed on the performance of the management services contractor under its contract. To the extent practicable, the Secretary General shall be present at or represented at and observe, but not participate in, major

contract negotiations conducted by the management services contractor on behalf of INTELSAT. For this purpose the Board of Governors may authorize the appointment to the executive organ of a small number of technically qualified personnel to assist the Secretary General. The Secretary General shall not be interposed between the Board of Governors and the management services contractor nor shall he exercise a supervisory role over the said contractor.

(c) The paramount consideration in the appointment of the Secretary General and in the selection of other personnel of the executive organ shall be the necessity of ensuring the highest standards of integrity, competency and efficiency. The Secretary General and the personnel of the executive organ shall refrain from any action incompatible with their responsibilities to INTELSAT. The Secretary General may be removed from office for cause by the Board of Governors. The office of Secretary General shall cease to exist on the assumption of office by the first Director General.

(d) (i) The Board of Governors shall designate a senior officer of the executive organ to serve as the Acting Secretary General whenever the Secretary General is absent or is unable to discharge his duties, or if the office of Secretary General should become vacant. The Acting Secretary General shall have the capacity to exercise all the powers of the Secretary General pursuant to this Agreement and the Operating Agreement. In the event of a vacancy, the Acting Secretary General shall serve in that capacity until the assumption of office by a Secretary General, who shall be appointed by the Board of Governors as expeditiously as possible.

(ii) The Secretary General may delegate such of his

powers to other officers in the executive organ as may be necessary to meet appropriate requirements.

(e) The contract referred to in subparagraph (a) (ii) of this Article shall be between the Communications Satellite Corporation, referred to in this Agreement as "the management services contractor", and INTELSAT, and shall be for the performance of technical and operational management services for INTELSAT, as specified in Annex B to this Agreement and in accordance with the guidelines set out therein, for a period terminating at the end of the sixth year after the date of entry into force of this Agreement. The contract shall contain provisions for the management services contractor:

(i) to act pursuant to relevant policies and directives of the Board of Governors;

(ii) to be responsible directly to the Board of Governors until the assumption of office by the first Director General and thereafter through the Director General; and

(iii) to furnish the Secretary General with all the information necessary for the Secretary General to keep the Board of Governors informed on the performance under the management services contract and for the Secretary General to be present at or represented at and observe, but not participate in, major contract negotiations conducted by the management services contractor on behalf of INTELSAT.

The management services contractor shall negotiate, place, amend and administer contracts on behalf of INTELSAT within the area of its responsibilities under the management

services contract and as otherwise authorized by the Board of Governors. Pursuant to authorization under the management services contract, or as otherwise authorized by the Board of Governors, the management services contractor shall sign contracts on behalf of INTELSAT in the area of its responsibilities. All other contracts shall be signed by the Secretary General.

(f) The study referred to in subparagraph (a) (iii) of this Article shall be commenced as soon as possible and, in any event, within one year after entry into force of this Agreement. It shall be conducted by the Board of Governors and shall be designed to provide the information necessary for the determination of the most efficient and effective permanent management arrangements consistent with the provisions of Article XI of this Agreement. The study shall, among other matters, give due regard to:

(i) the principles set forth in subparagraph (c) (i) of Article XI and the policy expressed in subparagraph (c) (ii) of Article XI, of this Agreement;

(ii) experience gained during the period of the Interim Agreement and of the transitional management arrangements provided for in this Article;

(iii) the organization and procedures adopted by telecommunications entities throughout the world, with particular reference to the integration of policy and management and to management efficiency;

(iv) information, similar to that referred to in subparagraph (iii) of this paragraph, in respect of multinational ventures for implementing advanced technologies; and

(v) reports commissioned from not less than three professional management consultants from various parts of the world.

(g) Not later than four years after the entry into force of this Agreement, the Board of Governors shall submit to the Assembly of Parties a comprehensive report, which incorporates the results of the study referred to in subparagraph (a) (iii) of this Article, and which includes the recommendations of the Board of Governors for the organizational structure of the executive organ. It shall also transmit copies of this report to the Meeting of Signatories and to all Parties and Signatories as soon as it is available.

(h) By not later than five years after entry into force of this Agreement, the Assembly of Parties, after having considered the report of the Board of Governors referred to in paragraph (g) of this Article and any views which may have been expressed by the Meeting of Signatories thereon, shall adopt the organizational structure of the executive organ which shall be consistent with the provisions of Article XI of this Agreement.

(i) The Director General shall assume office one year before the end of the management services contract referred to in subparagraph (a) (ii) of this Article or by December 31, 1976, whichever is earlier. The Board of Governors shall appoint the Director General, and the Assembly of Parties shall act upon the confirmation of the appointment, in time to enable the Director General to assume office in accordance with this paragraph. Upon his assumption of office, the Director General shall be responsible for all management services, including the performance of the functions performed by the Secretary General up to that time, and for the supervision of the performance of the management services contractor.

(j) The Director General, acting under relevant policies and directives of the Board of Governors, shall take all necessary steps to ensure that the permanent management arrangements are fully implemented not later than the end of the sixth year after the date of entry into force of this Agreement.

ARTICLE XIII

(Procurement)

(a) Subject to this Article, procurement of goods and services required by INTELSAT shall be effected by the award of contracts, based on responses to open international invitations to tender, to bidders offering the best combination of quality, price and the most favorable delivery time. The services to which this Article refers are those provided by juridical persons.

(b) If there is more than one bid offering such a combination, the contract shall be awarded so as to stimulate, in the interests of INTELSAT, world-wide competition.

(c) The requirement of open international invitations to tender may be dispensed with in those cases specifically referred to in Article 16 of the Operating Agreement.

ARTICLE XIV

(Rights and Obligations of Members)

(a) The Parties and Signatories shall exercise their rights and meet their obligations under this Agreement in a manner fully consistent with and in furtherance of the principles stated in the Preamble and other provisions of this Agreement.

(b) All Parties and all Signatories shall be allowed to attend and participate in all conferences and meetings, in which they are entitled to be represented in accordance with any provisions of this Agreement or the Operating Agreement, as well as in any other meeting called by or held under the auspices of INTELSAT, in accordance with the arrangements made by INTELSAT for such meetings regardless of where they may take place. The executive organ shall ensure that arrangements with the host Party or Signatory for each such conference or meeting shall include a provision for the admission to the host country and sojourn for the duration of such conference or meeting, of representatives of all Parties and all Signatories entitled to attend.

(c) To the extent that any Party or Signatory or person within the jurisdiction of a Party intends to establish, acquire or utilize space segment facilities separate from the INTELSAT space segment facilities to meet its domestic public telecommunications services requirements, such Party or Signatory, prior to the establishment, acquisition or utilization of such facilities, shall consult the Board of Governors, which shall express, in the form of recommendations, its findings regarding the technical compatibility of such facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned INTELSAT space segment.

(d) To the extent that any Party or Signatory or person within the jurisdiction of a Party intends individually or jointly to establish, acquire or utilize space segment facilities separate from the INTELSAT space segment facilities to meet its international public telecommunications services requirements, such Party or Signatory, prior to the establishment, acquisition or utilization of such facilities, shall furnish all relevant information to and shall consult with the Assembly of Parties, through the Board of

Governors, to ensure technical compatibility of such facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned INTELSAT space segment and to avoid significant economic harm to the global system of INTELSAT. Upon such consultation, the Assembly of Parties, taking into account the advice of the Board of Governors, shall express, in the form of recommendations, its findings regarding the considerations set out in this paragraph, and further regarding the assurance that the provision or utilization of such facilities shall not prejudice the establishment of direct telecommunication links through the INTELSAT space segment among all the participants.

(e) To the extent that any Party or Signatory or person within the jurisdiction of a party intends to establish, acquire or utilize space segment facilities separate from the INTELSAT space segment facilities to meet its specialized telecommunications services requirements, domestic or international, such Party or Signatory, prior to the establishment, acquisition or utilization of such facilities, shall furnish all relevant information to the Assembly of Parties, through the Board of Governors. The Assembly of Parties, taking into account the advice of the Board of Governors, shall express, in the form of recommendations, its findings regarding the technical compatibility of such facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned INTELSAT space segment.

(f) Recommendations by the Assembly of Parties or the Board of Governors pursuant to this Article shall be made within a period of six months from the date of commencing the procedures provided for in the foregoing paragraphs. An extraordinary. meeting of the Assembly of Parties may be convened for this purpose.

(g) This Agreement shall not apply to the establishment, acquisition or utilization of space segment facilities separate from the INTELSAT space segment facilities solely for national security purposes.

ARTICLE XV

(INTELSAT Headquarters, Privileges, Exemptions, Immunities)

(a) The headquarters of INTELSAT shall be in Washington.

(b) Within the scope of activities authorized by this Agreement, INTELSAT and its property shall be exempt in all States Party to this Agreement from all national income and direct national property taxation and from customs duties on communications satellites and components and parts for such satellites to be launched for use in the global system. Each Party undertakes to use its best endeavors to bring about, in accordance with the applicable domestic procedure, such further exemption of INTELSAT and its property from income and direct property taxation, and customs duties, as is desirable, bearing in mind the particular nature of INTELSAT.

(c) Each Party other than the Party in whose territory the headquarters of INTELSAT is located shall grant in accordance with the Protocol referred to in this paragraph, and the Party in whose territory the headquarters of INTELSAT is located shall grant in accordance with the Headquarters Agreement referred to in this paragraph, the appropriate privileges, exemptions and immunities to INTELSAT, to its officers, and to those categories of its employees specified in such Protocol and Headquarters Agreement, to Parties and representatives of Parties, to Signatories and representatives of signatories and to persons

participating in arbitration proceedings. In particular, each Party shall grant to these individuals immunity from legal process in respect of acts done or words written or spoken in the exercise of their functions and within the limits of their duties, to the extent and in the cases to be provided for in the Headquarters Agreement and Protocol referred to in this paragraph. The Party in whose territory the headquarters of INTELSAT is located shall, as soon as possible, conclude a Headquarters Agreement with INTELSAT covering privileges, exemptions and immunities. The Headquarters Agreement shall include a provision that all Signatories acting in their capacity as such, except the Signatory designated by the Party in whose territory the headquarters is located, shall be exempt from national taxation on income earned from INTELSAT in the territory of such Party. The other Parties shall also as soon as possible conclude a Protocol covering privileges, exemptions and immunities. The Headquarters Agreement and the Protocol shall be independent of this Agreement and each shall prescribe the conditions of its termination.

ARTICLE XVI

(Withdrawal)

(a) (i) Any Party or Signatory may withdraw voluntarily from INTELSAT. A Party shall give written notice to the Depositary of its decision to withdraw. The decision of a Signatory to withdraw shall be notified in writing to the executive organ by the Party which has designated it and such notification shall signify the acceptance by the Party of such notification of decision to withdraw.

(ii) Voluntary withdrawal shall become effective and this Agreement and the Operating Agreement

shall cease to be in force for a Party or Signatory three months after the date of receipt of the notice referred to in subparagraph (i) of this paragraph or, if the notice so states, on the date of the next determination of investment shares pursuant to subparagraph (c) (ii) of Article 6 of the Operating Agreement following the expiration of such three months.

(b) (i) If a Party appears to have failed to comply with any obligation under this Agreement, the Assembly of Parties, having received notice to that effect or acting on its own initiative, and having considered any representations made by the Party, may decide, if it finds that the failure to comply has in fact occurred, that the Party be deemed to have withdrawn from INTELSAT. This Agreement shall cease to be in force for the Party as of the date of such decision. An extraordinary meeting of the Assembly of Parties may be convened for this purpose.

(ii) If any Signatory, in its capacity as such, appears to have failed to comply with any obligation under this Agreement or the Operating Agreement, other than obligations under paragraph (a) of Article 4 of the Operating Agreement and the failure to comply shall not have been remedied within three months after the Signatory has been notified in writing by the executive organ of a resolution of the Board of Governors taking note of the failure to comply, the Board of Governors may, after considering any representations made by the Signatory or the Party which designated it, suspend the rights of the Signatory, and may recommend to the Meeting of Signatories that the Signatory be

deemed to have withdrawn from INTELSAT. If the Meeting of Signatories, after consideration of any representations made by the Signatory or by the Party which designated it, approves the recommendation of the Board of Governors, the withdrawal of the Signatory shall become effective upon the date of the approval, and this Agreement and the Operating Agreement shall cease to be in force for the Signatory as of that date.

(c) If any Signatory fails to pay any amount due from it pursuant to paragraph (a) of Article 4 of the Operating Agreement within three months after the payment has become due, the rights of the Signatory under this Agreement and the Operating Agreement shall be automatically suspended. If within three months after the suspension the Signatory has not paid all sums due or the Party which has designated the Signatory has not made a substitution pursuant to paragraph (f) of this Article, the Board of Governors, after considering any representations made by the Signatory or by the Party which has designated it, may recommend to the Meeting of Signatories that the Signatory be deemed to have withdrawn from INTELSAT. The Meeting of Signatories, after considering any representations made by the Signatory, may decide that the Signatory be deemed to have withdrawn from INTELSAT and, from the date of the decision, this Agreement and the Operating Agreement shall cease to be in force for the Signatory.

(d) Withdrawal of a Party, in its capacity as such, shall entail the simultaneous withdrawal of the Signatory designated by the Party or of the Party in its capacity as Signatory, as the case may be, and this Agreement and the Operating Agreement shall cease to be in force for the Signatory on the same date on which this Agreement ceases

to be in force for the Party which has designated it.

(e) In all cases of withdrawal of a Signatory from INTELSAT, the Party which designated the Signatory shall assume the capacity of a Signatory, or shall designate a new Signatory effective as of the date of such withdrawal, or shall withdraw from INTELSAT.

(f) If for any reason a Party desires to substitute itself for its designated Signatory or to designate a new Signatory, it shall give written notice thereof to the Depositary, and upon assumption by the new Signatory of all the outstanding obligations of the previously designated Signatory and upon signature of the Operating Agreement, this Agreement and the Operating Agreement shall enter into force for the new Signatory and thereupon shall cease to be in force for such previously designated Signatory.

(g) Upon the receipt by the Depositary or the executive organ, as the case may be, of notice of decision to withdraw pursuant to subparagraph (a) (i) of this Article, the Party giving notice and its designated Signatory, or the Signatory in respect of which notice has been given, as the case may be, shall cease to have any rights of representation and any voting rights in any organ of INTELSAT, and shall incur no obligation or liability after the receipt of the notice, except that the Signatory, unless the Board of Governors decides otherwise pursuant to paragraph (d) of Article 21 of the Operating Agreement, shall be responsible for contributing its share of the capital contributions necessary to meet both contractual commitments specifically authorized before such receipt and liabilities arising from acts or omissions before such receipt.

(h) During the period of suspension of the rights of a Signatory pursuant to subparagraph (b) (ii) or paragraph (c) of this Article, the Signatory shall continue to have all the

obligations and liabilities of a Signatory under this Agreement and the Operating Agreement.

(i) If the Meeting of Signatories, pursuant to subparagraph (b) (ii) or paragraph (c) of this Article, decides not to approve the recommendation of the Board of Governors that the Signatory be deemed to have withdrawn from INTELSAT, as of the date of that decision the suspension shall be lifted and the Signatory shall thereafter have all rights under this Agreement and the Operating Agreement, provided that where a Signatory is suspended pursuant to paragraph (c) of this Article the suspension shall not be lifted until the Signatory has paid the amounts due from it pursuant to paragraph (a) of Article 4 of the Operating Agreement.

(j) If the Meeting of Signatories approves the recommendation of the Board of Governors pursuant to subparagraph (b) (ii) or paragraph (c) of this Article that a Signatory be deemed to have withdrawn from INTELSAT, that Signatory shall incur no obligation or liability after such approval, except that the Signatory, unless the Board of Governors decides otherwise pursuant to paragraph (d) of Article 21 of the Operating Agreement, shall be responsible for contributing its share of the capital contributions necessary to meet both contractual commitments specifically authorized before such approval and liabilities arising from acts or omissions before such approval.

(k) If the Assembly of Parties decides pursuant to subparagraph (b) (i) of this Article that a Party be deemed to have withdrawn from INTELSAT, the Party in its capacity as Signatory or its designated Signatory, as the case may be, shall incur no obligation or liability after such decision, except that the Party in its capacity as Signatory or its designated Signatory, as the case may be, unless the Board of Governors decides otherwise pursuant to paragraph (d) of

Article 21 of the Operating Agreement, shall be responsible for contributing its share of the capital contributions necessary to meet both contractual commitments specifically authorized before such decision and liabilities arising from acts or omissions before such decision.

(l) Settlement between INTELSAT and a Signatory for which this Agreement and the Operating Agreement have ceased to be in force, other than in the case of substitution pursuant to paragraph (f) of this Article, shall be accomplished as provided in Article 21 of the Operating Agreement.

(m) (i) Notification of the decision of a Party to withdraw pursuant to subparagraph (a) (i) of this Article shall be transmitted by the Depositary to all Parties and to the executive organ, and the latter shall transmit the notification to all Signatories.

(ii) If the Assembly of Parties decides that a Party shall be deemed to have withdrawn from INTELSAT pursuant to subparagraph (b) (i) of this Article, the executive organ shall notify all Signatories and the Depositary, and the latter shall transmit the notification to all Parties.

(iii) Notification of the decision of a Signatory to withdraw pursuant to subparagraph (a) (i) of this Article or of the withdrawal of a Signatory pursuant to subparagraph (b) (ii) or paragraph (c) or (d) of this Article, shall be transmitted by the executive organ to all Signatories and to the Depositary, and the latter shall transmit the notification to all Parties.

(iv) The suspension of a Signatory pursuant to

subparagraph (b) (ii) or paragraph (c) of this Article shall be notified by the executive organ to all Signatories and to the Depositary, and the latter shall transmit the notification to all Parties.

(v) The substitution of a Signatory pursuant to paragraph (f) of this Article shall be notified by the Depositary to all Parties and to the executive organ, and the latter shall transmit the notification to all Signatories.

(n) No Party or its designated Signatory shall be required to withdraw from INTELSAT as a direct result of any change in the status of that Party with regard to the International Telecommunication Union.

ARTICLE XVII

(Amendment)

(a) Any Party may propose amendments to this Agreement. Proposed amendments shall be submitted to the executive organ, which shall distribute them promptly to all Parties and Signatories.

(b) The Assembly of Parties shall consider each proposed amendment at its first ordinary meeting following its distribution by the executive organ, or at an earlier extraordinary meeting convened in accordance with the provisions of Article VII of this Agreement, provided that the proposed amendment has been distributed by the executive organ at least ninety days before the opening date of the meeting. The Assembly of Parties shall consider any views and recommendations which it receives from the Meeting of Signatories or the Board of Governors with respect to a proposed amendment.

(c) The Assembly of Parties shall take decisions on each proposed amendment in accordance with the provisions relating to quorum and voting contained in Article VII of this Agreement. It may modify any proposed amendment, distributed in accordance with paragraph (b) of this Article, and may also take decisions on any amendment not so distributed but directly consequential to a proposed or modified amendment.

(d) An amendment which has been approved by the Assembly of Parties shall enter into force in accordance with paragraph (e) of this Article after the Depositary has received notice of approval, acceptance or ratification of the amendment from either:

(i) two-thirds of the States which were Parties as of the date upon which the amendment was approved by the Assembly of Parties, provided that such two-thirds include Parties which then held, or whose designated Signatories then held, at least two-thirds of the total investment shares; or

(ii) a number of States equal to or exceeding eighty-five per cent of the total number of States which were Parties as of the date upon which the amendment was approved by the Assembly of Parties, regardless of the amount of investment shares such Parties or their designated Signatories then held.

(e) The Depositary shall notify all the Parties as soon as it has received the acceptances, approvals or ratifications required by paragraph (d) of this Article for the entry into force of an amendment. Ninety days after the date of issue of this notification, the amendment shall enter into force for all Parties, including those that have not yet accepted,

approved, or ratified it and have not withdrawn from INTELSAT.

(f) Notwithstanding the provisions of paragraphs (d) and (e) of this Article, an amendment shall not enter into force less than eight months or more than eighteen months after the date it has been approved by the Assembly of Parties.

ARTICLE XVIII

(Settlement of Disputes)

(a) All legal disputes arising in connection with the rights and obligations under this Agreement or in connection with obligations undertaken by Parties pursuant to paragraph (c) of Article 14 or paragraph (c) of Article 15 of the Operating Agreement, between Parties with respect to each other, or between INTELSAT and one or more Parties, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex C to this Agreement. Any legal dispute arising in connection with the rights and obligations under this Agreement or the Operating Agreement between one or more Parties and one or more Signatories may be submitted to arbitration in accordance with the provisions of Annex C to this Agreement, provided that the Party or Parties and the Signatory or Signatories involved agree to such arbitration.

(b) All legal disputes arising in connection with the rights and obligations under this Agreement, or in connection with the obligations undertaken by Parties pursuant to paragraph (c) of Article 14 or paragraph (c) of Article 15 of the Operating Agreement, between a Party and a State which has ceased to be a Party or between INTELSAT and a State which has ceased to be a Party, and which arise after the State ceased to be a Party, if not otherwise settled within a reasonable time, shall be submitted to arbitration. Such

arbitration shall be in accordance with the provisions of Annex C to this Agreement, provided that the State which has ceased to be a Party so agrees. If a State ceases to be a Party, or if a State or a telecommunications entity ceases to be a Signatory, after a dispute in which it is a disputant has been submitted to arbitration pursuant to paragraph (a) of this Article, the arbitration shall be continued and concluded.

(c) All legal disputes arising as a result of agreements between INTELSAT and any Party shall be subject to the provisions on settlement of disputes contained in such agreements. In the absence of such provisions, such disputes, if not otherwise settled, may be submitted to arbitration in accordance with the provisions of Annex C to this Agreement if the disputants so agree.

ARTICLE XIX

(Signature)

(a) This Agreement shall be open for signature at Washington from August 20, 1971 until it enters into force, or until a period of nine months has elapsed, whichever occurs first:

(i) by the Government of any State party to the Interim Agreement;

(ii) by the Government of any other State member of the International Telecommunication Union.

(b) Any Government signing this Agreement may do so without its signature being subject to ratification, acceptance or approval or with a declaration accompanying its signature that it is subject to ratification, acceptance or approval.

(c) Any State referred to in paragraph (a) of this Article

may accede to this Agreement after it is closed for signature.

(d) No reservation may be made to this Agreement.

ARTICLE XX

(Entry Into Force)

(a) This Agreement shall enter into force sixty days after the date on which it has been signed not subject to ratification, acceptance or approval, or has been ratified, accepted, approved or acceded to, by two-thirds of the States which were parties to the Interim Agreement as of the date upon which this Agreement is opened for signature, provided that:

(i) such two-thirds include parties to the Interim Agreement which then held, or whose signatories to the Special Agreement then held, at least two-thirds of the quotas under the Special Agreement; and

(ii) such parties or their designated telecommunications entities have signed the Operating Agreement.[1]

Upon the commencement of such sixty days, the provisions of paragraph 2 of the Annex to the Operating Agreement shall enter into force for the purposes stated in that paragraph. Notwithstanding the foregoing provisions, this Agreement shall not enter into force less than eight months or more than eighteen months after the date it is opened for signature.

(b) For a State whose instrument of ratification, acceptance, approval or accession is deposited after the date this Agreement enters into force pursuant to paragraph (a) of this Article, this Agreement shall enter into force on the date of such deposit.

(c) Upon entry into force of this Agreement pursuant to paragraph (a) of this Article, it may be applied provisionally with respect to any State whose Government signed it subject to ratification, acceptance or approval if that Government so requests at the time of signature or at any time thereafter prior to the entry into force of this Agreement. Provisional application shall terminate:

(i) upon deposit of an instrument of ratification, acceptance or approval of this Agreement by that Government;

(ii) upon expiration of two years from the date on which this Agreement enters into force without having been ratified, accepted or approved by that Government; or

---

[1]Feb. 12, 1973.

(iii) upon notification by that Government, before expiration of the period mentioned in subparagraph (ii) of this paragraph, of its decision not to ratify, accept or approve this Agreement.

If provisional application terminates pursuant to subparagraph (ii) or (iii) of this paragraph, the provisions of paragraphs (g) and (l) of Article XVI of this Agreement shall govern the rights and obligations of the Party and of its designated Signatory.

(d) Notwithstanding the provisions of this Article, this Agreement shall neither enter into force for any State nor be applied provisionally with respect to any State until the Government of that State or the telecommunications entity designated pursuant to this Agreement shall have signed the Operating Agreement.

(e) Upon entry into force, this Agreement shall replace and terminate the Interim Agreement.

ARTICLE XXI

(Miscellaneous Provisions)

(a) The official and working languages of INTELSAT shall be English, French and Spanish.

(b) Internal regulations for the executive organ shall provide for the prompt distribution to all Parties and Signatories of copies of any INTELSAT document in accordance with their requests.

(c) Consistent with the provisions of Resolution 1721 (XVI) of the General Assembly of the United Nations, the executive organ shall send to the Secretary General of the

United Nations, and to the Specialized Agencies concerned, for their information, an annual report on the activities of INTELSAT.

ARTICLE XXII

(Depositary)

(a) The Government of the United States of America shall be the Depositary for this Agreement, with which shall be deposited declarations made pursuant to paragraph (b) of Article XIX of this Agreement, instruments of ratification, acceptance, approval or accession, requests for provisional application, and notifications of ratification, acceptance or approval of amendments, of decisions to withdraw from INTELSAT, or of termination of the provisional application of this Agreement.

(b) This Agreement, of which the English, French and Spanish texts are equally authentic, shall be deposited in the archives of the Depositary. The Depositary shall transmit certified copies of the text of this Agreement to all Governments that have signed it or deposited instruments of accession to it, and to the International Telecommunication Union, and shall notify those Governments, and the International Telecommunication Union, of signatures, of declarations made pursuant to paragraph (b) of Article XIX of this Agreement, of the deposit of instruments of ratification, acceptance, approval or accession, of requests for provisional application, of commencement of the sixty-day period referred to in paragraph (a) of Article XX of this Agreement, of the entry into force of this Agreement, of notifications of ratification, acceptance or approval of amendments, of the entry into force of amendments, of decisions to withdraw from INTELSAT, of withdrawals and of terminations of provisional application of this Agreement. Notice of the commencement of the sixty-day period shall be

issued on the first day of that period.

(c) Upon entry into force of this Agreement, the Depositary shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.[1]

IN WITNESS WHEREOF the Plenipotentiaries gathered together in the city of Washington, who have submitted their full powers, found to be in good and due form, have signed this Agreement.

DONE at Washington, on the 20th day of August, one thousand nine hundred and seventy one.

---

[1]TS 993; 59 Stat. 1052

ANNEX A

FUNCTIONS OF THE SECRETARY GENERAL

The functions of the Secretary General referred to in paragraph (b) of Article XII of this Agreement include the following:

1) maintain the INTELSAT traffic data projections and, for this purpose, convene periodic regional meetings in order to estimate traffic demands;

2) approve applications for access to the INTELSAT space segment by standard earth stations, report to the Board of Governors on applications for access by non-standard earth stations, and maintain records on dates of availability of existing and proposed earth stations;

3) maintain records based on reports submitted by Signatories, other earth station owners and the management services contractor, on the technical, and operational capabilities and limitations of all existing and proposed earth stations;

4) maintain an office of record of the assignment of frequencies to users and arrange for the notification of frequencies to the International Telecommunication Union;

5) based on planning assumptions approved by the Board of Governors, prepare capital and operating budgets and estimates of revenue requirements;

6) recommend INTELSAT space segment utilization charges to the Board of Governors;

7) recommend accounting policies to the Board of Governors;

8) maintain books of account and make them available for audit as required by the Board of Governors, and prepare monthly and annual financial statements;

9) calculate the investment shares of Signatories, render accounts to Signatories for capital contributions and to allottees for INTELSAT space segment utilization charges, receive cash payments on behalf of INTELSAT, and make revenue distributions and other cash disbursements to Signatories on behalf of INTELSAT;

10) advise the Board of Governors of Signatories in default of capital contributions, and of allottees in default of payments for INTELSAT space segment utilization charges;

11) approve and pay invoices submitted to INTELSAT with respect to authorized purchases and contracts made by the executive organ, and reimburse the management services contractor for expenditures incurred in connection with purchases and contracts made on behalf of INTELSAT and authorized by the Board of Governors;

12) administer INTELSAT personnel benefit programs and pay salaries and authorized expenses of INTELSAT personnel;

13) invest or deposit funds on hand, and draw upon such investments or deposits as necessary to meet INTELSAT obligations;

14) maintain INTELSAT property and depreciation accounts, and arrange with the management services contractor and the appropriate Signatories for the necessary inventories of INTELSAT property;

15) recommend terms and conditions of allotment agreements for utilization of the INTELSAT space segment;

16) recommend insurance programs for protection of INTELSAT property and, as authorized by the Board of Governors, arrange for necessary coverage;

17) for the purpose of paragraph (d) of Article XIV of this Agreement, analyze and report to the Board of Governors on the estimated economic effects to INTELSAT of any proposed space segment facilities separate from the INTELSAT space segment facilities;

18) prepare the tentative agenda for meetings of the Assembly of Parties, the Meeting of Signatories and the Board of Governors and their advisory committees, and the provisional summary records of such meetings, and assist the chairmen of advisory committees in preparation of their agenda, records and reports to the Assembly of Parties, the Meeting of Signatories and the Board of Governors;

19) arrange for interpretation services, for the translation, reproduction, and distribution of documents, and for the preparation of verbatim records of meetings, as necessary;

20) provide the history of the decisions taken by the Assembly of Parties, the Meeting of Signatories and the Board of Governors, and prepare reports and correspondence relating to decisions taken during their meetings;

21) assist in the interpretation of the rules of procedure of the Assembly of Parties, the Meeting of Signatories and the Board of Governors, and the terms of reference for their advisory committees;

22) make arrangements for any meetings of the Assembly of Parties, the Meeting of Signatories and the Board of Governors and of their advisory committees;

23) recommend procedures and regulations for contracts and purchases made on behalf of INTELSAT;

24) keep the Board of Governors informed on the performance of the obligations of contractors, including the management services contractor;

25) compile and maintain a world-wide list of bidders for all INTELSAT procurement;

26) negotiate, place and administer contracts necessary to enable the Secretary General to perform his assigned functions, including contracts for obtaining assistance from other entities to perform such functions;

~~27)~~ provide or arrange for the provision of legal advice to INTELSAT, as required in connection with the functions of the Secretary General;

28) provide appropriate public information services; and

29) arrange and convene conferences for negotiation of the Protocol covering privileges, exemptions and immunities, referred to in paragraph (c) of Article XV of this Agreement.

ANNEX B

FUNCTIONS OF THE MANAGEMENT SERVICES CONTRACTOR AND GUIDELINES OF THE MANAGEMENT SERVICES CONTRACT

1) Pursuant to Article XII of this Agreement, the management services contractor shall perform the following functions:

(a) recommend to the Board of Governors research and development programs directly related to the purposes of INTELSAT;

(b) as authorized by the Board of Governors:

(i) conduct studies and research and development, directly or under contract with other entities or persons,

(ii) conduct system studies in the fields of engineering, economics and cost effectiveness,

(iii) perform system simulation tests and evaluations, and

(iv) study and forecast potential demands for new tele-communications satellite services;

(c) advise the Board of Governors on the need to procure space segment facilities for the INTELSAT space segment;

(d) as authorized by the Board of Governors, prepare and distribute requests for proposals, including specifications, for procurement of space segment facilities;

(e) evaluate all proposals submitted in response to

requests for proposals and make recommendations to the Board of Governors on such proposals;

(f) pursuant to procurement regulations and in accordance with decisions of the Board of Governors:

(i) negotiate, place, amend and administer all contracts on behalf of INTELSAT for space segments,

(ii) make arrangements for launch services and necessary supporting activities, and cooperate in launches,

(iii) arrange insurance coverage to protect the INTELSAT space segment as well as equipment designated for launch or launch services,

(iv) provide or arrange for the provision of services for tracking, telemetry, command and control of the tele-communications satellites, including coordination of the efforts of Signatories and other owners of earth stations participating in the provision of these services, to perform satellite positioning, maneuvers, and tests, and

(v) provide or arrange for the provision of services for monitoring satellite performance characteristics, outages, and effectiveness, and the satellite power and frequencies used by the earth stations, including coordination of the efforts of Signatories and other owners of earth stations participating in the provision of these services;

(g) recommend to the Board of Governors frequencies for use by the INTELSAT space segment and location plans for

tele-communication satellites;

(h) operate the INTELSAT Operations Center and the Spacecraft Technical Control Center;

(i) recommend to the Board of Governors standard earth station performance characteristics, both mandatory and non-mandatory;

(j) evaluate applications for access to the INTELSAT space segment by non-standard earth stations;

(k) allot units of INTELSAT space segment capacity, as determined by the Board of Governors;

(l) prepare and coordinate system operations plans (including network configuration studies and contingency plans), procedures, guides, practices and standards, for adoption by the Board of Governors;

(m) prepare, coordinate and distribute frequency plans for assignment to earth stations having access to the INTELSAT space segment;

(n) prepare and distribute system status reports, to include actual and projected system utilization;

(o) distribute information to Signatories and other users on new telecommunications services and methods;

(p) for the purpose of paragraph (d) of Article XIV of this Agreement, analyze and report to the Board of Governors on the estimated technical and operational effect on INTELSAT of any proposed space segment facilities separate from the INTELSAT space segment facilities, including the effect on the frequency and location plans of INTELSAT;

(q) provide the Secretary General with the information necessary for the performance of his responsibility to the Board of Governors pursuant to paragraph 24 of Annex A to this Agreement;

(r) make recommendations relating to the acquisition, disclosure, distribution and protection of rights in inventions and technical information in accordance with Article 17 of the Operating Agreement;

(s) pursuant to decisions of the Board of Governors, arrange to make available to Signatories and others the rights of INTELSAT in inventions and technical information in accordance with Article 17 of the Operating Agreement, and enter into licensing agreements on behalf of INTELSAT; and

(t) take all operational, technical, financial, procurement, administrative and supporting actions necessary to carry out the above listed functions.

2) The management services contract shall include appropriate terms to implement the relevant provisions of Article XII of this Agreement and to provide for:

(a) reimbursement by INTELSAT in US dollars of all direct and indirect costs documented and identified, properly incurred by the management services contractor under the contract;

(b) payment to the management services contractor of a fixed fee at an annual rate in US dollars to be negotiated between the Board of Governors and the contractor;

(c) periodic review by the Board of Governors in consultation with the management services contractor of the costs under subparagraph (a) of this paragraph;

(d) compliance with procurement policies and procedures of INTELSAT, consistent with the relevant provisions of this Agreement and the Operating Agreement, in the solicitation and negotiation of contracts on behalf of INTELSAT;

(e) provisions with respect to inventions and technical information which are consistent with Article 17 of the Operating Agreement;

(f) technical personnel selected by the Board of Governors, with the concurrence of the management services contractor, from among persons nominated by Signatories, to participate in the assessment of designs and of specifications for equipment for the space segment;

(g) disputes or disagreements between INTELSAT and the management services contractor which may arise under the management services contract to be settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce; and

(h) the furnishing by the management services contractor to the Board of Governors of such information as may be required by any Governor to enable him to discharge his responsibilities as a Governor.

ANNEX C

PROVISIONS ON PROCEDURES RELATING TO SETTLEMENT OF DISPUTES REFERRED TO IN ARTICLE XVIII OF THIS AGREEMENT AND ARTICLE 20 OF THE OPERATING AGREEMENT

ARTICLE 1

The only disputants in arbitration proceedings instituted in accordance with this Annex shall be those referred to in Article XVIII of this Agreement, and Article 20 of, and the Annex to, the Operating Agreement.

ARTICLE 2

An arbitral tribunal of three members duly constituted in accordance with the provisions of this Annex shall be competent to give a decision in any dispute cognizable pursuant to Article XVIII of this Agreement, and Article 20 of, and the Annex to, the Operating Agreement.

ARTICLE 3

(a) Not later than sixty days before the opening date of the first and each subsequent ordinary meeting of the Assembly of Parties, each Party may submit to the executive organ the names of not more than two legal experts who will be available for the period from the end of such meeting until the end of the next ordinary meeting of the Assembly of Parties to serve as presidents or members of tribunals constituted in accordance with this Annex. From such nominees the executive organ shall prepare a list of all the persons thus nominated and shall attach to this list any biographical particulars submitted by the nominating Party,

and shall distribute such list to all Parties not later than thirty days before the opening date of the meeting in question. If for any reason a nominee becomes unavailable for selection to the panel during the sixty-day period before the opening date of the meeting of the Assembly of Parties, the nominating Party may, not later than fourteen days before the opening date of the meeting of the Assembly of Parties, substitute the name of another legal expert.

(b) From the list mentioned in paragraph (a) of this Article, the Assembly of Parties shall select eleven persons to be members of a panel from which presidents of tribunals shell be selected, and shall select an alternate for each such member. Members and alternates shall serve for the period prescribed in paragraph (a) of this Article. If a member becomes unavailable to serve on the panel, he shall be replaced by his alternate.

(c) For the purpose of designating a chairman, the panel shall be convened to meet by the executive organ as soon as possible after the panel has been selected. The quorum for a meeting of the panel shall be nine of the eleven members. The panel shall designate one of its members as its chairman by a decision taken by the affirmative votes of at least six members, cast in one or, if necessary, more than one secret ballot. The chairman so designated shall hold office as chairman for the rest of his period of office as a member of the panel. The cost of the meeting of the panel shall be regarded as an administrative cost of INTELSAT for the purpose of Article 8 of the Operating Agreement.

(d) If both a member of the panel and the alternate for that member become unavailable to serve, the Assembly of Parties shall fill the vacancies thus created from the list referred to in paragraph (a) of this Article. If, however, the Assembly of Parties does not meet within ninety days subsequent to the occurrence of the vacancies, they shall be

filled by selection by the Board of Governors from the list referred to in paragraph (a) of this Article, with each Governor having one vote. A person selected to replace a member or alternate whose term of office has not expired shall hold office for the remainder of the term of his predecessor. Vacancies in the office of the chairman of the panel shall be filled by the panel by designation of one of its members in accordance with the procedure prescribed in paragraph (c) of this Article.

(e) In selecting the members of the panel and the alternates in accordance with paragraph (b) or (d) of this Article, the Assembly of Parties or the Board of Governors shall seek to ensure that the composition of the panel will always be able to reflect an adequate geographical representation, as well as the principal legal systems as they are represented among the Parties.

(f) Any panel member or alternate serving on an arbitral tribunal at the expiration of his term shall continue to serve until the conclusion of any arbitral proceeding pending before such tribunal.

(g) If, during the period between the date of entry into force of this Agreement and the establishment of the first panel and alternates pursuant to the provisions of paragraph (b) of this Article, a legal dispute arises between the disputants mentioned in Article 1 of this Annex, the panel, as constituted in accordance with paragraph (b) of Article 3 of the Supplementary Agreement on Arbitration dated June 4, 1965, shall be the panel for use in connection with the settlement of that dispute. That panel shall act in accordance with the provisions of this Annex for the purposes of Article XVIII of this Agreement, and Article 20 of, and the Annex to, the Operating Agreement.

ARTICLE 4

(a) Any petitioner wishing to submit a legal dispute to arbitration shall provide each respondent and the executive organ with a document which contains:

(i) a statement which fully describes the dispute being submitted for arbitration, the reasons why each respondent is required to participate in the arbitration, and the relief being requested;

(ii) a statement which sets forth why the subject matter of the dispute comes within the competence of a tribunal to be constituted in accordance with this Annex, and why the relief being requested can be granted by such tribunal if it finds in favor of the petitioner;

(iii) a statement explaining why the petitioner has been unable to achieve a settlement of the dispute within a reasonable time by negotiation or other means short of arbitration;

(iv) in the case of any dispute for which, pursuant to Article XVIII of this Agreement or Article 20 of the Operating Agreement, the agreement of the disputants is a condition for arbitration in accordance with this Annex, evidence of such agreement; and

(v) the name of the person designated by the petitioner to serve as a member of the tribunal.

(b) The executive organ shall promptly distribute to each Party and Signatory, and to the chairman of the panel, a copy of the document provided pursuant to paragraph (a) of this Article.

ARTICLE 5

(a) Within sixty days from the date copies of the document described in paragraph (a) of Article 4 of this Annex have been received by all the respondents, the side of the respondents shall designate an individual to serve as a member of the tribunal. Within that period, the respondents may, jointly or individually, provide each disputant and the executive organ with a document stating their responses to the document referred to in paragraph (a) of Article 4 of this Annex and including any counter-claims arising out of the subject matter of the dispute. The executive organ shall promptly furnish the chairman of the panel with a copy of any such document.

(b) In the event of a failure by the side of the respondents to make such a designation within the period allowed, the chairman of the panel shall make a designation from among the experts whose names were submitted to the executive organ pursuant to paragraph (a) of Article 3 of this Annex.

(c) Within thirty days after the designation of the two members of the tribunal, they shall agree on a third person selected from the panel constituted in accordance with Article 3 of this Annex, who shall serve as the president of the tribunal. In the event of failure to reach agreement within such period of time, either of the two members designated may inform the chairman, of the panel, who, within ten days, shall designate a member of the panel other than himself to serve as president of the tribunal.

(d) The tribunal is constituted as soon as the president is selected.

ARTICLE 6

(a) If a vacancy occurs in the tribunal for reasons which the president or the remaining members of the tribunal decide are beyond the control of the disputants, or are compatible with the proper conduct of the arbitration proceedings, the vacancy shall be filled in accordance with the following provisions:

(i) if the vacancy occurs as a result of the withdrawal of a member appointed by a side to the dispute, then that side shall select a replacement within ten days after the vacancy occurs;

(ii) if the vacancy occurs as a result of the withdrawal of the president of the tribunal or of another member of the tribunal appointed by the chairman, a replacement shall be selected from the panel in the manner described in paragraph (c) or (b) respectively of Article 5 of this Annex.

(b) If a vacancy occurs in the tribunal for any reason other than as described in paragraph (a) of this Article, or if a vacancy occurring pursuant to that paragraph is not filled, the remainder of the tribunal shall have the power, notwithstanding the provisions of Article 2 of this Annex, upon the request of one side, to continue the proceedings and give the final decision of the tribunal.

ARTICLE 7

(a) The tribunal shall decide the date and place of its sittings.

(b) The proceedings shall be held in private and all material presented to the tribunal shall be confidential, except that INTELSAT and the Parties whose designated Signatories and the Signatories whose designating Parties are disputants in the proceedings shall have the right to be present and shall have access to the material presented. When INTELSAT is a disputant in the proceedings, all Parties and all Signatories shall have the right to be present and shall have access to the material presented.

(c) In the event of a dispute over the competence of the tribunal, the tribunal shall deal with this question first, and shall give its decision as soon as possible.

(d) The proceedings shall be conducted in writing, and each side shall have the right to submit written evidence in support of its allegations of fact and law. However, oral arguments and testimony may be given if the tribunal considers it appropriate.

(e) The proceedings shall commence with the presentation of the case of the petitioner containing its arguments, related facts supported by evidence and the principles of law relied upon. The case of the petitioner shall be followed by the counter-case of the respondent. The petitioner may submit a reply to the counter-case of the respondent. Additional pleadings shall be submitted only if the tribunal determines they are necessary.

(f) The tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute, provided the counter-claims are within its competence as

defined in Article XVIII of this Agreement, and Article 20 of, and the Annex to, the Operating Agreement.

(g) If the disputants reach an agreement during the proceedings, the agreement shall be recorded in the form of a decision of the tribunal given by consent of the disputants.

(h) At any time during the proceedings, the tribunal may terminate the proceedings if it decides the dispute is beyond its competence as defined in Article XVIII of the Agreement, Article 20 of, and the Annex to, the Operating Agreement.

(i) The deliberations of the tribunal shall be secret.

(j) The decisions of the tribunal shall be presented in writing and shall be supported by a written opinion. Its rulings and decisions must be supported by at least two members. A member dissenting from the decision may submit a separate written opinion.

(k) The tribunal shall forward its decision to the executive organ, which shall distribute it to all Parties and Signatories.

(l) The tribunal may adopt additional rules of procedure, consistent with those established by this Annex, which are necessary for the proceedings.

ARTICLE 8

If one side fails to present its case, the other side may call upon the tribunal to give a decision in its favor. Before giving its decision, the tribunal shall satisfy itself that it has competence and that the case is well-founded in fact and in law.

ARTICLE 9

(a) Any Party whose designated Signatory is a disputant in a case shall have the right to intervene and become an additional disputant in the case. Intervention shall be made by giving notice thereof in writing to the tribunal and to the other disputants.

(b) Any other Party, any Signatory or INTELSAT, if it considers that it has a substantial interest in the decision of the case, may petition the tribunal for permission to intervene and become an additional disputant in the case. If the tribunal determines that the petitioner has a substantial interest in the decision of the case, it shall grant the petition.

ARTICLE 10

Either at the request of a disputant, or upon its own initiative, the tribunal may appoint such experts as it deems necessary to assist it.

ARTICLE 11

Each Party, each Signatory and INTELSAT shall provide all information determined by the tribunal, either at the request of a disputant or upon its own initiative, to be required for the handling and determination of the dispute.

ARTICLE 12

During the course of its consideration of the case, the tribunal may, pending the final decision, indicate any provisional measures which it considers would preserve the respective rights of the disputants.

ARTICLE 13

(a) The decision of the tribunal shall be based on

(i) this Agreement and the Operating Agreement; and

(ii) generally accepted principles of law.

(b) The decision of the tribunal, including any reached by agreement of the disputants pursuant to paragraph (g) of Article 7 of this Annex, shall be binding on all the disputants and shall be carried out by them in good faith. In a case in which INTELSAT is a disputant, and the tribunal decides that a decision of one of its organs is null and void as not being authorized by or in compliance with this Agreement and the Operating Agreement, the decision of the tribunal shall be binding on all Parties and Signatories.

(c) In the event of a dispute as to the meaning or scope of its decision, the tribunal shall construe it at the request of any disputant.

ARTICLE 14

Unless the tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of the members of the tribunal, shall be borne in equal shares by each side. Where a side consists of more than one disputant, the share of that

side shall be apportioned by the tribunal among the disputants on that side. Where INTELSAT is a disputant, its expenses associated with the arbitration shall be regarded as an administrative cost of INTELSAT for the purpose of Article 8 of the Operating Agreement.

ANNEX D

TRANSITION PROVISIONS

1) Continuity of INTELSAT Activities

Any decision of the Interim Communications Satellite Committee taken pursuant to the Interim Agreement or the Special Agreement and which is in effect as of the termination of those Agreements shall remain in full force and effect, unless and until it is modified or repealed by, or in implementation of, the terms of this Agreement or the Operating Agreement.

2) Management

During the period immediately following entry into force of this Agreement, the Communications Satellite Corporation shall continue to act as the manager for the design, development, construction, establishment, operation and maintenance of the INTELSAT space segment pursuant to the same terms and conditions of service which were applicable to its role as manager pursuant to the Interim Agreement and the Special Agreement. In the discharge of its functions it shall be bound by all the relevant provisions of this Agreement and the Operating Agreement and shall in particular be subject to the general policies and specific determinations of the Board of Governors, until:

(i) the Board of Governors determines that the executive organ is ready to assume responsibility for performance of all or certain of the functions of the executive organ pursuant to Article XII of this Agreement, at which time the Communications Satellite Corporation shall be relieved of its responsibility for performance of each such function as it is assumed by the executive organ; and

(ii) the management services contract referred to in subparagraph (a) (ii) of Article XII of this Agreement takes effect, at which time the provisions of this paragraph shall cease to have effect with respect to those functions within the scope of that contract.

3) Regional Representation

During the period between entry into force of this Agreement and the date of assumption of office by the Secretary General, the entitlement, consistent with paragraph (c) of Article IX of this Agreement, of any group of Signatories seeking representation on the Board of Governors, pursuant to subparagraph (a)(iii) of Article IX of this Agreement, shall become effective upon receipt by the Communications Satellite Corporation of a written request from such group.

4) Privileges and Immunities

The Parties to this Agreement which were parties to the Interim Agreement shall extend to the corresponding successor persons and bodies until such times as the Headquarters Agreement and the Protocol, as the case may be, enter into force as provided for in Article XV of this Agreement, those privileges, exemptions and immunities which were extended by such Parties, immediately prior to entry into force of this Agreement, to the International Telecommunications Satellite Consortium, to the signatories to the Special Agreement and to the Interim Communications Satellite Committee and to representatives thereto.

• • •

Agreement Relating to the International Telecommunications Satellite Organization "Intelsat" done Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 4091, T.I.A.S. No. 7532 (1971)

OPERATING AGREEMENT RELATING TO THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION "INTELSAT"

PREAMBLE

The Signatories to this Operating Agreement:

Considering that the States Parties to the Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT" have undertaken therein to sign or to designate a telecommunications entity to sign this Operating Agreement,

Agree as follows:

ARTICLE 1

(Definitions)

(a) For the purpose of this Operating Agreement:

(i) "Agreement" means the Agreement Relating to the International Telecommunications Satellite Organization "INTELSAT";

(ii) "Amortization" includes depreciation; and

(iii) "Assets" includes every subject of whatever nature to which a right of ownership can attach, as well as contractual rights.

(b) The definitions in Article I of the Agreement shall apply to this Operating Agreement.

ARTICLE 2

(Rights and Obligations of Signatories)

Each Signatory acquires the rights provided for Signatories in the Agreement and this Operating Agreement and undertakes to fulfill the obligations placed upon it by those Agreements.

ARTICLE 3

(Transfer of Rights and Obligations)

(a) As of the date the Agreement and this Operating Agreement enter into force and subject to the requirements of Article 19 of this Operating Agreement:

(i) all of the property and contractual rights and all other rights, including rights in and to the space segment, owned in undivided shares by the signatories to the Special Agreement pursuant to the Interim Agreement and the Special Agreement as of such date, shall be owned by INTELSAT;

(ii) all of the obligations and liabilities undertaken or incurred by or on behalf of the signatories to the Special Agreement collectively in carrying out the provisions of the Interim Agreement and the Special Agreement which are outstanding as of, or arise from acts or omissions prior to, such date shall become obligations and liabilities of INTELSAT. However this subparagraph shall not apply to any such obligation or liability

arising from actions or decisions taken after the opening for signature of the Agreement which, after the entry into force of the Agreement, could not have been taken by the Board of Governors without prior authorization of the Assembly of Parties pursuant to paragraph (f) of Article III of the Agreement.

(b) INTELSAT shall be the owner of the INTELSAT space segment and of all other property acquired by INTELSAT.

(c) The financial interest in INTELSAT of each Signatory shall be equal to the amount arrived at by the application of its investment share to the valuation effected pursuant to Article 7 of this Operating Agreement.

ARTICLE 4

(Financial Contributions)

(a) Each Signatory shall make contributions to the capital requirements of INTELSAT, as determined by the Board of Governors in accordance with the terms of the Agreement and this Operating Agreement, in proportion to its investment share as determined pursuant to Article 6 of this Operating Agreement and shall receive capital repayment and compensation for use of capital in accordance with the provisions of Article 8 of this Operating Agreement

(b) Capital requirements shall include all direct and indirect costs for the design, development, construction and establishment of the INTELSAT space segment and for other INTELSAT property, as well as requirements for contributions by Signatories pursuant to paragraph (f) of Article 8 and paragraph (b) of Article 18 of this Operating Agreement. The Board of Governors shall determine the

financial requirements of INTELSAT which shall be met from capital contributions from the Signatories.

(c) Each Signatory, as user of the INTELSAT space segment, as well as all other users, shall pay appropriate utilization charges established in accordance with the provisions of Article 8 of this Operating Agreement.

(d) The Board of Governors shall determine the schedule of payments required pursuant to this Operating Agreement. Interest at a rate to be determined by the Board of Governors shall be added to any amount unpaid after the date designated for payment.

ARTICLE 5

(Capital Ceiling)

(a) The sum of the net capital contributions of the Signatories and of the outstanding contractual capital commitments of INTELSAT shall be subject to a ceiling. This sum shall consist of the cumulative capital contributions made by the signatories to the Special Agreement, pursuant to Articles 3 and 4 of the Special Agreement, and by the Signatories to this Operating Agreement, pursuant to Article 4 of this Operating Agreement, less the cumulative capital repaid to them pursuant to the Special Agreement and to this Operating Agreement, plus the outstanding amount of contractual capital commitments of INTELSAT.

(b) The ceiling referred to in paragraph (a) of this Article shall be 500 million U.S. dollars or the amount authorized pursuant to paragraph (c) or (d) of this Article.

(c) The Board of Governors may recommend to the Meeting of Signatories that the ceiling in effect under

paragraph (b) of this Article be increased. Such recommendation shall be considered by the Meeting of Signatories, and the increased ceiling shall become effective upon approval by the Meeting of Signatories.

(d) However, the Board of Governors may increase the ceiling up to ten percent above the limit of 500 million U.S. dollars or such higher limits as may be approved by the Meeting of Signatories pursuant to paragraph (c) of this Article.

ARTICLE 6

(Investment Shares)

(a) Except as otherwise provided in this Article, each Signatory shall have an investment share equal to its percentage of all utilization of the INTELSAT space segment by all Signatories.

(b) For the purpose of paragraph (a) of this Article, utilization of the INTELSAT space segment by a Signatory shall be measured by dividing the space segment utilization charges payable by the Signatory to INTELSAT by the number of days for which charges were payable during the six-month period prior to the effective date of a determination of investment shares pursuant to subparagraph (c) (i), (c) (ii) or (c) (v) of this Article. However, if the number of days for which charges were payable by a Signatory for utilization during such six-month period was less than ninety days, such charges shall not be taken into account in determining investment shares.

(c) Investment shares shall be determined effective as of:

(i) the date of entry into force of this Operating Agreement;

(ii) the first day of March of each year, provided that if this Operating Agreement enters into force less than six months before the succeeding first day of March, there shall be no determination under this subparagraph effective as of that date;

(iii) the date of entry into force of this Operating Agreement for a new Signatory;

(iv) the effective date of withdrawal of a Signatory from INTELSAT; and

(v) the date of request by a Signatory for whom INTELSAT space segment utilization charges have, for the first time, become payable by that Signatory for utilization through its own earth station, provided that such date of request is not less than ninety days following the date the space segment utilization charges became payable.

(d) (i) Any Signatory may request that, if any determination of investment shares made pursuant to paragraph (c) of this Article would result in its investment share exceeding its quota or investment share, as the case may be, held immediately prior to such determination, it be allocated a lesser investment share, provided that such investment share shall not be less than its final quota held pursuant to the Special Agreement or than its investment share held

immediately prior to the determination, as the case may be. Such requests shall be deposited with INTELSAT and shall indicate the reduced investment share desired. INTELSAT shall give prompt notification of such requests to all Signatories, and such requests shall be honored to the extent that other Signatories accept greater investment shares.

(ii) Any Signatory may notify INTELSAT that it is prepared to accept an increase in its investment share in order to accommodate requests for lesser investment shares made pursuant to subparagraph (i) of this paragraph and up to what limit, if any. Subject to such limits, the total amount of reduction in investment shares requested pursuant to subparagraph (i) of this paragraph shall be distributed among the Signatories which have accepted, pursuant to this subparagraph, greater investment shares, in proportion to the investment shares held by them immediately prior to the applicable adjustment.

(iii) If reductions requested pursuant to subparagraph (i) of this paragraph cannot be wholly accommodated among the Signatories which have accepted greater investment shares pursuant to subparagraph (ii) of this paragraph, the total amount of accepted increases shall be allocated, up to the limits indicated by each Signatory accepting a greater investment share pursuant to this paragraph, as reductions to those Signatories which requested lesser investment shares pursuant to subparagraph (i) of this paragraph, in proportion to the reductions requested by them under

subparagraph (i) of this paragraph.

(iv) Any Signatory which has requested a lesser or accepted a greater investment share pursuant to this paragraph shall be deemed to have accepted the decrease or increase of its investment share, as determined pursuant to this paragraph, until the next determination of investment shares pursuant to subparagraph (c) (ii) of this Article.

(v) The Board of Governors shall establish appropriate procedures with regard to notification of requests by Signatories for lesser investment shares made pursuant to subparagraph (i) of this paragraph, and notification by Signatories which are prepared to accept increases in their investment shares pursuant to subparagraph (ii) of this paragraph.

(e) For the purposes of composition of the Board of Governors and calculation of the voting participation of Governors, the investment shares determined pursuant to subparagraph (c) (ii) of this Article shall take effect from the first day of the ordinary meeting of the Meeting of Signatories following such determination.

(f) To the extent that an investment share is determined pursuant to subparagraph (c) (iii) or (c) (v) or paragraph (h) of this Article, and to the extent necessitated by withdrawal of a Signatory, the investment shares of all other Signatories shall be adjusted in the proportion that their respective investment shares, held prior to this adjustment, bear to each other. On the withdrawal of a Signatory, investment shares of 0.05 per cent determined in accordance with the provisions of paragraph (h) of this Article shall not be increased.

(g) Notification of the results of each determination of investment shares, and of the effective date of such determination, shall be promptly furnished to all Signatories by INTELSAT.

(h) Notwithstanding any provision of this Article, no Signatory shall have an investment share of less than 0.05 per cent of the total investment shares.

ARTICLE 7

(Financial Adjustments Between Signatories)

(a) On entry into force of this Operating Agreement and thereafter at each determination of investment shares, financial adjustments shall be made between Signatories, through INTELSAT, on the basis of a valuation effected pursuant to paragraph (b) of this Article. The amounts of such financial adjustments shall be determined with respect to each Signatory by applying to such valuation:

(i) on entry into force of this Operating Agreement, the difference, if any, between the final quota of each Signatory held pursuant to the Special Agreement and its initial investment share determined pursuant to Article 6 of this Operating Agreement;

(ii) at each subsequent determination of investment shares, the difference, if any, between the new investment share of each Signatory and its investment share prior to such determination.

(b) The valuation referred to in paragraph (a) of this Article shall be effected as follows:

(i) deduct from the original cost of all assets as

recorded in INTELSAT accounts as of the date of adjustment, including any capitalized return or capitalized expenses, the sum of:

(A) the accumulated amortization as recorded in INTELSAT accounts as of the date of adjustment, and

(B) loans and other accounts payable by INTELSAT as of the date of adjustment;

(ii) adjust the results obtained pursuant to subparagraph (i) of this paragraph by:

(A) adding or deducting, for the purpose of the financial adjustments on entry into force of this Operating Agreement, an amount representing any deficiency or excess, respectively, in the payment by INTELSAT of compensation for use of capital relative to the cumulative amount due pursuant to the Special Agreement, at the rate or rates of compensation for use of capital in effect during the periods in which the relevant rates were applicable, as established by the Interim Communications Satellite Committee pursuant to Article 9 of the Special Agreement. For the purpose of assessing the amount representing any deficiency or excess in payment, compensation due shall be calculated on a monthly basis and relate to the net amount of the elements described in subparagraph (i) of this paragraph;

(B) adding or deducting, for the purpose of each subsequent financial adjustment a

further amount representing any deficiency or excess, respectively, in the payment by INTELSAT of compensation for use of capital from the time of entry into force of this Operating Agreement to the effective date of valuation, relative to the cumulative amount due pursuant to this Operating Agreement, at the rate or rates of compensation for use of capital in effect during the periods in which the relevant rates were applicable, as established by the Board of Governors pursuant to Article 8 of this Operating Agreement. For the purpose of assessing the amount representing any deficiency or excess in payment, compensation due shall be calculated on a monthly basis and relate to the net amount of the elements described in subparagraph (i) of this paragraph.

(c) Payments due from and to Signatories pursuant to the provisions of this Article shall be effected by a date designated by the Board of Governors. Interest at a rate to be determined by the Board of Governors shall be added to any amount unpaid after that date, except that, with respect to payments due pursuant to subparagraph (a) (i) of this Article, interest shall be added from the date of entry into force of this Operating Agreement. The rate of interest referred to in this paragraph shall be equal to the rate of interest determined by the Board of Governors pursuant to paragraph (d) of Article 4 of this Operating Agreement.

ARTICLE 8

(Utilization Charges and Revenues)

(a) The Board of Governors shall specify the units of

measurement of INTELSAT space segment utilization relative to various types of utilization and, guided by such general rules as may be established by the Meeting of Signatories pursuant to Article VIII of the Agreement, shall establish INTELSAT space segment utilization charges. Such charges shall have the objective of covering the operating, maintenance and administrative costs of INTELSAT, the provision of such operating funds as the Board of Governors may determine to be necessary, the amortization of investment made by Signatories in INTELSAT and compensation for use of the capital of Signatories.

(b) For the utilization of capacity available for the purposes of specialized telecommunications services, pursuant to paragraph (d) of Article III of the Agreement, the Board of Governors shall establish the charge to be paid for the utilization of such services. In doing so it shall comply with the provisions of the Agreement and this Operating Agreement and in particular paragraph (a) of this Article, and shall take into consideration the costs associated with the provision of the specialized telecommunications services as well as an adequate part of the general and administrative costs of INTELSAT. In the case of separate satellites or associated facilities financed by INTELSAT pursuant to paragraph (e) of Article V of the Agreement, the Board of Governors shall establish the charges to be paid for the utilization of such services. In doing so, it shall comply with the provisions of the Agreement and this Operating Agreement and in particular paragraph (a) of this Article, so as to cover fully the costs directly resulting from the design, development, construction, and provision of such separate satellites and associated facilities as well as an adequate part of the general and administrative costs of INTELSAT.

(c) In determining the rate of compensation for use of the capital of Signatories, the Board of Governors shall include

an allowance for the risks associated with investment in INTELSAT and, taking into account such allowance, shall fix the rate as close as possible to the cost of money in the world markets.

(d) The Board of Governors shall institute any appropriate sanctions in cases where payments of utilization charges shall have been in default for three months or longer.

(e) The revenues earned by INTELSAT shall be applied, to the extent that such revenues allow, in the following order of priority:

(i) to meet operating, maintenance and administrative costs;

(ii) to provide such operating funds as the Board of Governors may determine to be necessary;

(iii) to pay to Signatories, in proportion to their respective investment shares, sums representing a repayment of capital in the amount of the provisions for amortization established by the Board of Governors and recorded in the INTELSAT accounts;

(iv) to pay to a Signatory which has withdrawn from INTELSAT such sums as may be due to it pursuant to Article 21 of this Operating Agreement; and

(v) to pay to Signatories, in proportion to their respective investment shares, the available balance towards compensation for use of capital.

(f) To the extent, if any, that the revenues earned by

INTELSAT are insufficient to meet INTELSAT operating, maintenance and administrative costs, the Board of Governors may decide to meet the deficiency by using INTELSAT operating funds, by overdraft arrangements, by raising a loan, by requiring Signatories to make capital contributions in proportion to their respective investment shares or by any combination of such measures.

ARTICLE 9

(Transfer of Funds)

(a) Settlement of accounts between Signatories and INTELSAT in respect of financial transactions pursuant to Articles 4, 7 and 8 of this Operating Agreement shall be so arranged as to minimize both transfers of funds between Signatories and INTELSAT and the amount of funds held by INTELSAT over and above any operating funds determined by the Board of Governors to be necessary.

(b) All payments between Signatories and INTELSAT pursuant to this Operating Agreement shall be made in U.S. dollars or in currency freely convertible into U.S. dollars.

ARTICLE 10

(Overdrafts and Loans)

(a) For the purpose of meeting financial deficiencies, pending the receipt of adequate INTELSAT revenues or of capital contributions by Signatories pursuant to this Operating Agreement, INTELSAT may, with the approval of the Board of Governors, enter into overdraft arrangements.

(b) Under exceptional circumstances and for the purpose of financing any activity undertaken by INTELSAT, or of meeting any liability incurred by INTELSAT, pursuant to paragraph (a), (b) or (c) of Article III of the Agreement or to this Operating Agreement, INTELSAT may raise loans upon decision of the Board of Governors. The outstanding amounts of such loans shall be considered as contractual capital commitments for the purpose of Article 5 of this Operating Agreement. The Board of Governors shall, in accordance with subparagraph (a) (xiv) of Article X of the Agreement, report fully to the Meeting of Signatories with respect to the reasons for its decision to raise any loan and the terms and conditions under which such a loan was raised.

ARTICLE 11

(Excluded Costs)

The following shall not form part of the costs of INTELSAT:

(i) taxes on income derived from INTELSAT of any of the Signatories;

(ii) design and development expenditure on launchers and launching facilities except

expenditure incurred for the adaptation of launchers and launching facilities in connection with the design, development, construction and establishment of the INTELSAT space segment; and

(iii) the costs of representatives of Parties and Signatories incurred in attending meetings of the Assembly of Parties, of the Meeting of Signatories, of the Board of Governors or any other meetings of INTELSAT.

ARTICLE 12

(Audit)

The accounts of INTELSAT shall be audited annually by independent auditors appointed by the Board of Governors. Any Signatory shall have the right of inspection of INTELSAT accounts.

ARTICLE 13

(International Telecommunication Union)

In addition to observing the relevant regulations of the International Telecommunication Union, INTELSAT shall, in the design, development, construction and establishment of the INTELSAT space segment and in the procedures established for regulating the operation of the INTELSAT space segment and of the earth stations, give due consideration to the relevant recommendations and procedures of the International Telegraph and Telephone Consultative Committee, the International Radio Consultative Committee and the International Frequency Registration Board.

ARTICLE 14

(Earth Station Approval)

(a) Any application for approval of an earth station to utilize the INTELSAT space segment shall be submitted to INTELSAT by the Signatory designated by the Party in whose territory the earth station is or will be located or, with respect to earth stations located in a territory not under the jurisdiction of a Party, by a duly authorized telecommunication entity.

(b) Failure by the Meeting of Signatories to establish general rules, pursuant to subparagraph (b) (v) of Article VIII of the Agreement, or the Board of Governors to establish criteria and procedures, pursuant to subparagraph (a) (vi) of Article X of the Agreement, for approval of earth stations shall not preclude the Board of Governors from considering or acting upon any application for approval of an earth station to utilize the INTELSAT space segment.

(c) Each Signatory or telecommunications entity referred to in paragraph (a) of this Article shall, with respect to earth stations for which it has submitted an application, be responsible to INTELSAT for compliance of such stations with the rules and standards specified in the document of approval issued to it by INTELSAT, unless, in the case of a Signatory which has submitted an application, its designating Party assumes such responsibility with respect to all or some of the earth stations not owned or operated by such Signatory.

ARTICLE 15

(Allotment of Space Segment Capacity)

(a) Any application for allotment of INTELSAT space segment capacity shall be submitted to INTELSAT by a Signatory or, in the case of a territory not under the jurisdiction of a Party, by a duly authorized telecommunications entity.

(b) In accordance with the terms and conditions established by the Board of Governors pursuant to Article X of the Agreement, allotment of INTELSAT space segment capacity shall be made to a Signatory or, in the case of a territory not under the jurisdiction of a Party, to the duly authorized telecommunications entity making the application.

(c) Each Signatory or telecommunications entity to which an allotment has been made pursuant to paragraph (b) of this Article shall be responsible for compliance with all the terms and conditions established by INTELSAT with respect to such allotment, unless, in the case of a Signatory which has submitted an application, its designating Party assumes such responsibility for allotments made with respect to all or some of the earth stations not owned or operated by such Signatory.

ARTICLE 16

(Procurement)

(a) All contracts relating to the procurement of goods and services required by INTELSAT shall be awarded in accordance with Article XIII of the Agreement, Article 17 of this Operating Agreement and the procedures, regulations, terms and conditions established by the Board of Governors

pursuant to the provisions of the Agreement and this Operating Agreement. The services to which this Article refers are those provided by juridical persons.

(b) The approval of the Board of Governors shall be required before:

(i) the issuing of requests for proposals or invitations to tender for contracts which are expected to exceed 500,000 U.S. dollars in value;

(ii) the awarding of any contract to a value exceeding 500,000 U.S. dollars.

(c) In any of the following circumstances, the Board of Governors may decide to procure goods and services otherwise than on the basis of responses to open international invitations to tender:

(i) where the estimated value of the contract does not exceed 50,000 U.S. dollars or any such higher amount as the Meeting of Signatories may decide in the light of proposals by the Board of Governors;

(ii) where procurement is required urgently to meet an emergency situation involving the operational viability of the INTELSAT space segment;

(iii) where the requirement is of a predominantly administrative nature best suited to local procurement; and

(iv) where there is only one source of supply to a specification which is necessary to meet the requirements of INTELSAT or where the sources of supply are so severely restricted in

number that it would be neither feasible nor in the best interest of INTELSAT to incur the expenditure and time involved in open international tender, provided that where there is more than one source they will all have the opportunity to bid on an equal basis.

(d) The procedures, regulations, terms and conditions referred to in paragraph (a) of this Article shall provide for the supply of full and timely information to the Board of Governors. Upon request from any Governor, the Board of Governors shall be able to obtain, with respect to all contracts, any information necessary to enable that Governor to discharge his responsibilities as a Governor.

ARTICLE 17

(Inventions and Technical Information)

(a) INTELSAT, in connection with any work performed by it or on its behalf, shall acquire in inventions and technical information those rights, but no more than those rights, necessary in the common interests of INTELSAT and the Signatories in their capacity as such. In the case of work done under contract, any such rights obtained shall be on a non-exclusive basis.

(b) For the purposes of paragraph (a) of this Article, INTELSAT, taking into account its principles and objectives, the rights and obligations of the Parties and Signatories under the Agreement and this Operating Agreement and generally accepted industrial practices, shall, in connection with any work performed by it or on its behalf involving a significant element of study, research or development, ensure for itself:

(i) the right without payment to have disclosed to

it all inventions and technical information generated by work performed by it or on its behalf;

(ii) the right to disclose and have disclosed to Signatories and others within the jurisdiction of any Party and to use and authorize and have authorized Signatories and such others to use such inventions and technical information:

(A) without payment, in connection with the INTELSAT space segment and any earth station operating in conjunction therewith, and

(B) for any other purpose, on fair and reasonable terms and conditions to be settled between Signatories or others within the jurisdiction of any Party and the owner or originator of such inventions and technical information or any other duly authorized entity or person having a property interest therein.

(c) In the case of work done under contract, the implementation of paragraph (b) of this Article shall be based on the retention by contractors of ownership of rights in inventions and technical information generated by them.

(d) INTELSAT shall also ensure for itself the right, on fair and reasonable terms and conditions, to disclose and have disclosed to Signatories and others within the jurisdiction of any Party, and to use and authorize and have authorized Signatories and such others to use, inventions and technical information directly utilized in the execution of work performed on its behalf but not included in paragraph (b) of this Article, to the extent that the person

who has performed such work is entitled to grant such right and to the extent that such disclosure and use is necessary for the effective exercise of rights obtained pursuant to paragraph (b) of this Article.

(e) The Board of Governors may, in individual cases, where exceptional circumstances warrant, approve a deviation from the policies prescribed in subparagraph (b) (ii) and paragraph (d) of this Article where in the course of negotiations it is demonstrated to the Board of Governors that failure to deviate would be detrimental to the interests of INTELSAT and, in the case of subparagraph (b) (ii), that adherence to these policies would be incompatible with prior contractual obligations entered into in good faith by a prospective contractor with a third party.

(f) The Board of Governors may also, in individual cases, where exceptional circumstances warrant, approve a deviation from the policy prescribed in paragraph (c) of this Article where all of the following conditions are met:

(i) it is demonstrated to the Board of Governors that failure to deviate would be detrimental to the interests of INTELSAT,

(ii) it is determined by the Board of Governors that INTELSAT should be able to ensure patent protection in any country and

(iii) where, and to the extent that, the contractor is unable or unwilling to ensure such protection on a timely basis.

(g) In determining whether and in what form to approve any deviation pursuant to paragraphs (e) and (f) of this Article, the Board of Governors shall take into account the interests of INTELSAT and all Signatories and the estimated financial benefits to INTELSAT resulting from such deviation.

(h) With respect to inventions and technical information in which rights were acquired under the Interim Agreement and the Special Agreement, or are acquired under the Agreement and this Operating Agreement other than pursuant to paragraph (b) of this Article, INTELSAT, to the extent that it has the right to do so, shall upon request:

(i) disclose or have disclosed such inventions and technical information to any Signatory, subject to reimbursement of any payment made by or required of INTELSAT in respect of the exercise of such right of disclosure;

(ii) make available to any Signatory the right to disclose or have disclosed to others within the jurisdiction of any Party and to use and authorize or have authorized such others to use such inventions and technical information:

(A) without payment, in connection with the INTELSAT space segment or any earth station operating in conjunction therewith, and

(B) for any other purpose, on fair and reasonable terms and conditions to be settled between Signatories or others within the jurisdiction of any Party and INTELSAT or the owner or originator of such inventions and technical information

or any other duly authorized entity or person having a property interest therein, and subject to reimbursement of any payment made by or required of INTELSAT in respect of the exercise of such rights.

(i) To the extent that INTELSAT acquires the right pursuant to subparagraph (b) (i) of this Article to have inventions and technical information disclosed to it, it shall keep each Signatory which so requests informed of the availability and general nature of such inventions and technical information. To the extent that INTELSAT acquires rights pursuant to the provisions of this Article to make inventions and technical information available to Signatories and others in the jurisdiction of Parties, it shall make such rights available upon request to any Signatory or its designee.

(j) The disclosure and use, and the terms and conditions of disclosure and use, of all inventions and technical information in which INTELSAT has acquired any rights shall be on a non-discriminatory basis with respect to all Signatories and their designees.

ARTICLE 18

(Liability)

(a) Neither INTELSAT nor any Signatory, in its capacity as such, nor any director, officer or employee of any of them nor any representative to any organ of INTELSAT acting in the performance of their functions and within the scope of their authority, shall be liable to, nor shall any claim be made against any of them by, any Signatory or INTELSAT for loss or damage sustained by reason of any unavailability, delay or faultiness of telecommunications services provided

or to be provided pursuant to the Agreement or this Operating Agreement.

(b) If INTELSAT or any Signatory, in its capacity as such, is required, by reason of a binding decision rendered by a competent tribunal or as a result of a settlement agreed to or concurred in by the Board of Governors, to pay any claim, including any costs and expenses associated therewith, which arises out of any activity conducted or authorized by INTELSAT pursuant to the Agreement or to this Operating Agreement, to the extent that the claim is not satisfied through indemnification, insurance or other financial arrangements, the Signatories shall, notwithstanding any ceiling established by or pursuant to Article 5 of this Operating Agreement, pay to INTELSAT the amount unsatisfied on such claim in proportion to their respective investment shares as of the date the payment by INTELSAT of such claim is due.

(c) If such a claim is asserted against a Signatory, that Signatory, as a condition of payment by INTELSAT of the claim pursuant to paragraph (b) of this Article, shall without delay provide INTELSAT with notice thereof, and shall afford INTELSAT the opportunity to advise and recommend on or to conduct the defense or other disposition of the claim and, to the extent permitted by the law of the jurisdiction in which the claim is brought, to become a party to the proceeding either with such Signatory or in substitution for it.

ARTICLE 19

(Buy-Out)

(a) Consonant with the provisions of Articles IX and XV of the Interim Agreement, the Board of Governors shall, as soon as practicable and not later than three months after

entry into force of this Operating Agreement, determine, in accordance with paragraph (d) of this Article, the financial status in relation to INTELSAT of each signatory to the Special Agreement for which, in its capacity as a State, or for whose State the Agreement, on its entry into force, had neither entered into force nor been applied provisionally. The Board of Governors shall notify each such signatory in writing of its financial status and the rate of interest thereon. This rate of interest shall be close to the cost of money in world markets.

(b) A signatory may accept the assessment of its financial status and the rate of interest as notified pursuant to paragraph (a) of this Article or as may otherwise have been agreed between the Board of Governors and this signatory. INTELSAT shall pay to such signatory, in U.S. dollars or in another currency freely convertible into U.S. dollars, within ninety days of such acceptance, or within such greater period as may be mutually agreed, the amount so accepted, together with interest thereon from the date of entry into force of this Operating Agreement to the date of payment.

(c) If there is a dispute between INTELSAT and a signatory as to the amount or the rate of interest, which cannot be settled by negotiation within the period of one year from the date of notification pursuant to paragraph (a) of this Article, the amount and rate of interest notified shall remain the standing offer by INTELSAT to settle the matter, and the corresponding funds shall be set aside at the disposal of such signatory. Provided that a mutually acceptable tribunal can be found, INTELSAT shall refer the matter to arbitration if the signatory so requests. Upon receipt of the decision of the tribunal, INTELSAT shall pay to the signatory the amount decided by the tribunal in U.S. dollars or in another currency freely convertible into U.S. dollars.

(d) For the purpose of paragraph (a) of this Article, the financial status shall be determined as follows:

(i) multiply the final quota held by the signatory pursuant to the Special Agreement by the amount established from the valuation effected pursuant to paragraph (b) of Article 7 of this Operating Agreement as of the date of entry into force of this Operating Agreement; and

(ii) from the resulting product deduct any amounts due from that signatory as of the date of entry into force of this Operating Agreement.

(e) No provision of this Article shall:

(i) relieve a signatory described in paragraph (a) of this Article of its share of any obligations incurred by or on behalf of the signatories to the Special Agreement collectively as the result of acts or omissions in the implementation of the Interim Agreement and the Special Agreement prior to the date of entry into force of this Operating Agreement; or

(ii) deprive such a signatory of any rights acquired by it, in its capacity as such, which would otherwise continue after the termination of the Special Agreement and for which the signatory has not already been compensated pursuant to the provisions of this Article.

ARTICLE 20

(Settlement of Disputes)

(a) All legal disputes arising in connection with the rights and obligations under the Agreement or this Operating Agreement between Signatories with respect to eachother, or between INTELSAT and a Signatory or Signatories, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex C to the Agreement.

(b) All such disputes arising between a Signatory and a State or telecommunications entity which has ceased to be a Signatory, or between INTELSAT and a State or telecommunications entity which has ceased to be a Signatory, and which arise after such State or telecommunications entity ceased to be a Signatory, if not otherwise settled within a reasonable time, shall be submitted to arbitration, and may be submitted to arbitration in accordance with the provisions of Annex C to the Agreement provided the disputants in any given dispute so agree. If a State or telecommunications entity ceases to be a Signatory after an arbitration in which it is a disputant has commenced, such arbitration shall be continued and concluded in accordance with the provisions of Annex C to the Agreement, or, as the case may be, with the other provisions under which the arbitration is being conducted.

(c) All legal disputes arising in connection with agreements or contracts that INTELSAT may conclude with any Signatory shall be subject to the provisions on settlement of disputes contained in such agreements or contracts. In the absence of such provisions, such disputes, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex C to the Agreement.

(d) If upon entry into force of this Operating Agreement, any arbitration is in progress pursuant to the Supplementary Agreement on Arbitration dated June 4, 1965,[1] the provisions of that Agreement shall remain in force with respect to such arbitration until its conclusion. If the Interim Communications Satellite Committee is a party to any such arbitration, INTELSAT shall replace it as a party.

ARTICLE 21

(Withdrawal)

(a) Within three months after the effective date of withdrawal of a Signatory from INTELSAT pursuant to Article XVI of the Agreement, the Board of Governors shall notify the Signatory of the evaluation by the Board of Governors of its financial status in relation to INTELSAT as of the effective date of its withdrawal and of the proposed terms of settlement pursuant to paragraph (c) of this Article.

(b) The notification pursuant to paragraph (a) of this Article shall include a statement of:

(i) the amount payable by INTELSAT to the Signatory, calculated by multiplying the investment share held by the Signatory as of the effective date of its withdrawal by the amount established from a valuation effected pursuant to paragraph (b) of Article 7 of this Operating Agreement as of that date;

(ii) any amounts to be paid by the Signatory to INTELSAT, pursuant to paragraph (g), (j) or (k) of Article XVI of the Agreement, representing its

[1]TIAS 5646 (reprint, Jan. 1967).

share of capital contributions for contractual commitments specifically authorized prior to the receipt by the appropriate authority of notice of its decision to withdraw or, as the case may be, prior to the effective date of its withdrawal, together with the proposed schedule for the payments to meet the said contractual commitments; and

(iii) any amounts due from the Signatory to INTELSAT as of the effective date of its withdrawal.

(c) The amounts referred to in subparagraphs (b) (i) and (b) (ii) of this Article shall be repaid by INTELSAT to the Signatory over a period of time consistent with the period over which other Signatories will be repaid their capital contributions, or over such lesser period as the Board of Governors may consider appropriate. The Board of Governors shall determine the rate of interest to be paid to or by the Signatory in respect of any amounts which may, from time to time, be outstanding for settlement.

(d) In its evaluation pursuant to subparagraph (b) (ii) of this Article, the Board of Governors may decide to relieve the Signatory in whole or in part of its responsibility for contributing its share of the capital contributions necessary to meet both contractual commitments specifically authorized and liabilities arising from acts or omissions prior to the receipt of notice of withdrawal or, as the case may be, prior to the effective date of withdrawal of the Signatory pursuant to Article XVI of the Agreement.

(e) Except as may be decided by the Board of Governors pursuant to paragraph (d) of this Article, no provision of this Article shall:

(i) relieve a Signatory referred to in paragraph (a) of this Article of its share of any non-contractual obligations of INTELSAT arising from acts or omissions in the implementation of the Agreement and the Operating Agreement prior to the receipt of notice of its decision to withdraw or, as the case may be, prior to the effective date of its withdrawal; or

(ii) deprive such a Signatory of any rights acquired by it, in its capacity as such, which would otherwise continue after the effective date of its withdrawal, and for which the Signatory has not already been compensated pursuant to the provisions of this Article.

ARTICLE 22

(Amendments)

(a) Any Signatory, the Assembly of Parties or the Board of Governors may propose amendments to this Operating Agreement. Proposed amendments shall be submitted to the executive organ, which shall distribute them promptly to all Parties and Signatories.

(b) The Meeting of Signatories shall consider each proposed amendment at its first ordinary meeting following its distribution by the executive organ, or at an earlier extraordinary meeting convened in accordance with the provisions of Article VIII of the Agreement, provided that the proposed amendment has been distributed by the executive organ at least ninety days before the opening date of the meeting. The Meeting of Signatories shall consider any views and recommendations which it receives from the Assembly of Parties or the Board of Governors with respect to a proposed amendment.

(c) The Meeting of Signatories shall take decisions on each proposed amendment in accordance with the provisions relating to quorum and voting contained in Article VIII of the Agreement. It may modify any proposed amendment, distributed in accordance with paragraph (b) of this Article, and may also take decisions on any amendment not so distributed but directly consequential to a proposed or modified amendment.

(d) An amendment which has been approved by the Meeting of Signatories shall enter into force in accordance with paragraph (e) of this Article after the Depositary has received notice of approval of the amendment from either:

(i) two-thirds of the Signatories which were Signatories as of the date upon which the amendment was approved by the Meeting of Signatories, provided that such two-thirds include Signatories which then held at least two-thirds of the total investment shares; or

(ii) a number of Signatories equal to or exceeding eighty-five per cent of the total number of Signatories which were Signatories as of the date upon which the amendment was approved by the Meeting of Signatories, regardless of the amount of investment shares which such Signatories then held.

Notification of the approval of an amendment by a Signatory shall be transmitted to the Depositary by the Party concerned, and such a notification shall signify the acceptance by the Party of such amendment.

(e) The Depositary shall notify all the Signatories as soon as it has received the approvals of the amendment required by paragraph (d) of this Article for the entry into force of an

amendment. Ninety days after the date of issue of this notification, the amendment shall enter into force for all Signatories, including those that have not yet approved it and have not withdrawn from INTELSAT.

(f) Notwithstanding the provisions of paragraphs (d) and (e) of this Article, an amendment shall not enter into force later than eighteen months after the date it has been approved by the Meeting of Signatories.

ARTICLE 23

(Entry into Force)

(a) This Operating Agreement shall enter into force for a Signatory on the date on which the Agreement enters into force, in accordance with paragraphs (a) and (d) or paragraphs (b) and (d) of Article XX of the Agreement, for the Party concerned.

(b) This Operating Agreement shall be applied provisionally for a Signatory on the date on which the Agreement is applied provisionally, in accordance with paragraphs (c) and (d) of Article XX of the Agreement, for the Party concerned.

(c) This Operating Agreement shall continue in force for as long as the Agreement is in force.

ARTICLE 24

(Depositary)

(a) The Government of the United States of America shall be the Depositary for this Operating Agreement, the texts of which in English, French and Spanish are equally authentic. This Operating Agreement shall be deposited in the archives of the Depositary, with which shall also be deposited notifications of approval of amendments, of substitution of a Signatory pursuant to paragraph (f) of Article XVI of the Agreement, and of withdrawals from INTELSAT.

(b) The Depositary shall transmit certified copies of the texts of this Operating Agreement to all Governments and all designated telecommunications entities which have signed it, and to the International Telecommunication Union, and shall notify those Governments, designated telecommunications entities, and the International Telecommunication Union, of signatures to this Operating Agreement, of commencement of the sixty-day period referred to in paragraph (a) of Article XX of the Agreement, of the entry into force of this Operating Agreement, of notifications of approval of amendments and of the entry into force of amendments to this Operating Agreement. Notice of the commencement of the sixty-day period shall be issued on the first day of that period.

(c) Upon entry into force of this Operating Agreement, the Depositary shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF, the undersigned duly authorized thereto have signed this Operating Agreement.

DONE at Washington, on the 20th day of August, one

thousand nine hundred and seventy-one.

ANNEX

TRANSITION PROVISIONS

1) Obligations of Signatories

Each Signatory to this Operating Agreement which was, or whose designating Party was, a party to the Interim Agreement shall pay, or shall be entitled to receive, the net amount of any sums due pursuant to the Special Agreement as of the date of entry into force of the Agreement, from or to such party, in its capacity as a signatory to the Special Agreement, or from or to its designated signatory to the Special Agreement.

2) Establishment of the Board of Governors

(a) On the date of commencement of the sixty-day period referred to in paragraph (a) of Article XX of the Agreement, and thereafter at weekly intervals, the Communications Satellite Corporation shall notify all signatories to the Special Agreement and States or telecommunications entities designated by States for whom this Operating Agreement will come into force, or will be applied provisionally, on the date of entry into force of the Agreement, of the estimated initial investment share of each such State or telecommunications entity pursuant to the provisions of this Operating Agreement.

(b) During the said sixty-day period, the Communications Satellite Corporation shall make the necessary administrative preparations for the convening of the first meeting of the Board of Governors.

(c) Within three days after the date of entry into force of the Agreement, the Communications Satellite Corporation, acting pursuant to paragraph 2 of Annex D to the Agreement, shall:

(i) inform all Signatories for whom this Operating Agreement has come into force or has been applied provisionally of their initial investment shares determined pursuant to Article 6 of this Operating Agreement; and

(ii) inform all such Signatories of the arrangements made for the first meeting of the Board of Governors, which shall be convened not more than thirty days after the date of entry into force of the Agreement.

3) Settlement of Disputes

Any legal dispute which may arise between INTELSAT and the Communications Satellite Corporation in connection with the rendering of services by the Corporation to INTELSAT, between the date of entry into force of this Operating Agreement and the effective date of the contract arranged pursuant to subparagraph (a) (ii) of Article XII of the Agreement, if not otherwise settled within a reasonable time, shall be submitted to arbitration in accordance with the provisions of Annex C to the Agreement.

* * *

Headquarters Agreement between the Government of the United States of America and the International Telecommunications Satellite Organization, done Nov. 22 & 24, 1976, entered into force Nov. 24, 1976, 28 U.S.T. 2248, T.I.A.S. No. 8542 (1976)

INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION

Headquarters Agreement

Signed at Washington November 22 and 24, 1976; Entered into force November 24, 1976.

HEADQUARTERS AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION

Whereas, the headquarters of the International Telecommunications Satellite Organization (INTELSAT) are located in Washington; and

Whereas, the President of the United States has designated INTELSAT a public international organization entitled to certain privileges, exemptions, and immunities by Executive Order 11718,[1] in accordance with the provisions of the International Organizations Immunities Act of the United States of America;[2] and

Whereas, the United States is cognizant of its responsibilities under the Agreement Relating to the International Telecommunications Satellite Organization which entered into force on 12 February 1973 (INTELSAT Agreement);[3]

---

[1]38 Fed. Reg. 12797.
[2]59 Stat. 669; 22 U.S.C. § 288 note.
[3]TIAS 7532; 23 UST 3813.

The Government of the United States of America and INTELSAT have agreed as follows:

1. The property and assets of INTELSAT, wherever located and by whomsoever held, shall be immune from search, requisition, expropriation or any other form of seizure or confiscation, unless such immunity be expressly waived. The archives of INTELSAT shall be inviolable. The provisions of this paragraph shall also apply to the property, assets and archives of the Signatories to the INTELSAT Operating Agreement, other than the entity designated as Signatory for the United States, when such property, assets and archives are devoted to or reserved for INTELSAT purposes and are not utilized for purposes other than those provided for by the INTELSAT Agreement or this Headquarters Agreement.

2. The income of INTELSAT shall be exempt from national taxation by the Government of the United States and from taxation by laws applicable to the District of Columbia. The income exempted from taxation hereby shall include that received from investments in the United States in stocks, bonds, or other domestic securities owned by INTELSAT, or from interest on deposits in banks in the United States of monies belonging to INTELSAT, or from any other source within or without the United States.

3. Signatories, other than the entity designated by the United States, shall be exempt from national taxation by the Government of the United States on income earned from INTELSAT and from such taxation as is imposed on such income by laws applicable to the District of Columbia.

4. Wages, salaries and fees paid by INTELSAT to its officers and employees shall not be subject to withholding for purposes of national taxation by the United States thereon or such taxation as is imposed by laws applicable to the

District of Columbia. INTELSAT and its officers and employees, other than nationals of the United States, shall be exempt from making contributions for insurance, social security, or other programs adopted by the Government of the United States or such programs as may be adopted by laws applicable to the District of Columbia.

5. INTELSAT, its Parties and Signatories, other than the entity designated by the United States or nationals of the United States, shall be exempt from all national property taxes imposed by the Government within the scope of activity authorized by the INTELSAT Agreement and from such property taxes imposed by the District of Columbia.

6. INTELSAT shall be exempt from all communications taxes imposed by the Government of the United States, including such taxes as are applicable to the District of Columbia, respecting activities authorized by the INTELSAT Agreement.

7. The privileges and exemptions conferred by the Act to Provide for the Immunity from Taxation in the District of Columbia (Public Law 91-494)[1] are hereby incorporated by reference.

8. Insofar as concerns customs duties and internal revenue taxes imposed upon or by reason of importation and the procedures in connection therewith the registration of foreign agents other than nationals of the United States, and the treatment of official communications, INTELSAT, its Parties and Signatories, other than the entity designated by the United States, shall be entitled to those privileges, exemptions and immunities accorded under similar circumstances to foreign governments.

---

[1]84 Stat. 1091; 47 D.C.C. § 1557 note.

9. INTELSAT may import without payment of customs duties and internal revenue taxes communications satellites, components, and parts for communications satellites, to be launched in the United States under the terms of the INTELSAT Agreement, subject to the terms and conditions imposed by the Government of the United States with respect to storage and bond, unless these terms and conditions are amended or waived by such Government.

10. INTELSAT may request, under Section 842.10 of the Tariff Schedules of the United States or other relevant provisions thereof, importation without payment of customs duties and internal revenue taxes, of articles to be used in connection with the activities authorized by the INTELSAT Agreement. Such requests shall be processed by the Department of State and the Customs Service in accordance with existing procedures.

11. Pursuant to regulations prescribed by the Commissioner of Customs, the baggage and effects of alien officers and employees of INTELSAT, of non-U.S. nationals designated by the Parties or Signatories to serve as their representatives in or to INTELSAT, of persons participating in arbitration proceedings pursuant to the INTELSAT Agreement, or the families, suites and servants of such officers, employees, representatives or persons participating in arbitration proceedings shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and internal revenue taxes imposed upon or by reason of such importation.

12. The wages, fees or salaries of any officer or employee of INTELSAT, representative of a Party or person participating in arbitration proceedings pursuant to the INTELSAT Agreement, who is neither a national nor a permanent resident of the United States, to the extent such wages, fees or salaries are received in connection with the

performance of activities authorized under the INTELSAT Agreement, shall be exempt from national taxation imposed by the Government of the United States and such taxation as is imposed by laws applicable to the District of Columbia.

13. All representatives of Signatories other than the entity designated by the United States, who qualify as non-U.S. nationals and meet the requirements of Section 893 of the Internal Revenue Code[1] and Section 1.893-1(a) of its regulations, shall be exempt from national taxation imposed by the Government of the United States and such taxation as is imposed by laws applicable to the District of Columbia with respect to wages, fees or salaries received as compensation for services rendered to the Signatory in connection with the performance of activities authorized under the INTELSAT Agreement.

14. The officers and employees of INTELSAT, the representatives of Parties and Signatories, the persons participating in arbitration proceedings pursuant to the INTELSAT Agreement and their families shall insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, and registration of foreign agents, be entitled to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments and members of their families.

15. With respect to alien registration and fingerprinting, the servants of (a) officers and employees of INTELSAT, (b) representatives of Parties and Signatories, and (c) persons participating in arbitration proceedings pursuant to the INTELSAT Agreement, shall be entitled to the same

---

[1]68A Stat. 284; 26 U.S.C. § 893.

privileges, exemptions and immunities accorded to servants of representatives, officers and employees of foreign governments and representatives to and officers and employees of international organizations.

16. The officers and employees of INTELSAT, the representatives of the Parties and of the Signatories and persons participating in arbitration proceedings pursuant to the INTELSAT Agreement shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions, except insofar as such immunity may be waived by the head of the executive organ of INTELSAT for its officers and employees, by the Parties and Signatories for their representatives, and by the parties in arbitration proceedings, respectively.

17. (a) No person shall be entitled to the benefits of this Agreement unless he (1) shall have been duly notified to and accepted by the Secretary of State as a representative, officer, employee or participant in arbitration proceedings; or (2) shall have been designated by the Secretary of State, prior to formal notification and acceptance, as a prospective representative, officer, employee or participant in arbitration proceedings; or (3) is a member of the family or suite, or servant, of one of the foregoing accepted or designated representatives, officers, employees or participants in arbitration proceedings.

(b) Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this Agreement is not desirable, he shall so inform INTELSAT or the foreign government, as the case may be, and after such person shall have had a

reasonable length of time, to be determined by the Secretary of State, to depart from the United States, he shall cease to be entitled to such benefits.

(c) No person shall, by reason of the provisions of this Agreement, be considered as receiving diplomatic status or as receiving any privileges or immunities incident thereto, other than such as are specifically set forth herein.

18. The privileges, exemptions, and immunities of INTELSAT and its officers and employees, of the Parties, Signatories and their representatives, of the participants in arbitration proceedings pursuant to the INTELSAT Agreement and of members of their families, suites, and servants of such officers, employees, representatives and participants, provided for in this Agreement, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: Provided, That nothing contained in this Agreement shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to nationals of the United States.

19. This Agreement shall be brought into effect by an exchange of notes between the Secretary General of INTELSAT and the appropriate Executive Officer of the United States.[1] This Agreement may be terminated by

---

[1]Nov. 24, 1976.

mutual agreement of the parties hereto.

IN WITNESS WHEREOF, the respective representatives have signed this Agreement.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA	FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE ORGANIZATION
Joel W. Biller Deputy Assistant Secretary for Transportation, Telecommunications and Commercial Affairs, Department of State	Santiago Astrain Secretary General

Supreme Court, U.S.
FILED
JAN 23 1992
OFFICE OF THE CLERK

No. 91-1038

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., and REYNOLD V. ANSELMO d/b/a PAN AMERICAN SATELLITE,
Petitioners,

v.

COMMUNICATIONS SATELLITE CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

Of Counsel:
WARREN Y. ZEGER
KEITH H. FAGAN
COMMUNICATIONS SATELLITE CORPORATION
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024
(202) 863-6019

A. DUNCAN WHITAKER
Counsel of Record
MARK D. WEGENER
YVETTE BENGUEREL
HOWREY & SIMON
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 783-0800

THOMAS J. SWEENEY, III
DAVIS MARKEL & EDWARDS
100 Park Avenue
New York, New York 10017
(212) 685-5885

Attorneys for Respondent Communications Satellite Corporation

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether international executive agreements to which the United States is a party, together with the Communications Satellite Act of 1962 and the Executive Branch's pervasive control over respondent, confer express as well as implied immunity upon respondent with respect to its activities as the official United States representative and Signatory to INTELSAT.*

---

* While the United States Court of Appeals for the Second Circuit affirmed the district court's dismissal of petitioners' complaint on the ground that respondent COMSAT was immune from suit with respect to its activities as the United States representative and Signatory to INTELSAT, the Court reversed and remanded to permit the filing of an amended complaint alleging non-immune conduct. Following this reversal and remand, petitioners, on November 13, 1991, filed a second amended complaint which is now pending in the United States District Court for the Southern District of New York. The second amended complaint contains many of the same allegations and seeks precisely the same relief and damages as the original complaint. Unless otherwise indicated, all references to "petitioners' complaint" in this brief are to the complaint considered by the district court and court of appeals in connection with respondent's original motion to dismiss, not the second amended complaint currently pending in the district court.

PARTIES TO THE PROCEEDING

The parties to the proceedings below were the petitioners Alpha Lyracom Space Communications, Inc. and Reynold V. Anselmo d/b/a Pan American Satellite, and the respondent, Communications Satellite Corporation.**

** Pursuant to Rule 29.1 of this Court, Communications Satellite Corporation ("COMSAT") states that it has a partial interest in Mobile Telesystems, Inc. and Anadigics, Inc. COMSAT has no parent company or partially-owned subsidiaries.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
COUNTER-STATEMENT OF THE CASE	3
Formation and Role of INTELSAT and COMSAT	5
Pervasive Control and Supervision of Respondent As the United States Signatory to INTELSAT	8
Consideration of Separate Systems	10
Decisions of the Lower Courts	13
REASONS FOR DENYING THE PETITION	16
The Second Circuit Crafted a Limited Immunity Based, in Part, Upon Immunity Provisions in the INTELSAT Agreements	17
The Petitioners' Complaint, Not the Second Circuit Decision, Would Undermine the 1984 Presidential Determination	20
The Lower Courts' Reading of Section 701(c) is Compelled by the Language, Structure and Purpose of the CSA and its Legislative History	22
Limited Immunity for Respondent in its Role as Signatory is Compelled by the CSA and the Executive Branch's Pervasive Regimen for Directing Respondent in that Role	25
CONCLUSION	30

TABLE OF AUTHORITIES

Cases:

Page

Boimah v. United Nations General Assembly, 664 F. Supp. 69 (E.D.N.Y. 1987) 19
Butz v. Economou, 438 U.S. 478 (1978) 28
Chan v. Korean Airlines, Ltd., 109 S. Ct. 1676 (1989) 18
COMSAT v. FCC, 836 F.2d 623 (D.C. Cir. 1988) .. 5
Donald v. Orfila, 618 F. Supp. 645 (D.D.C. 1985), *aff'd*, 788 F.2d 36 (1986) 28
Finnegan v. Campeau Corp., 915 F.2d 824 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1624 (1991) 25
Gordon v. New York Stock Exchange, Inc., 422 U.S. 659 (1975) 26
In re Ross, 140 U.S. 453 (1891) 18
International Paper Co. v. Ouellette, 479 U.S. 481 (1987) 19
Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949) 28
Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387 (1923) 17
Pennsylvania ex rel. Zimmerman v. PepsiCo, Inc., 836 F.2d 173 (3d Cir. 1988) 28
Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70 (1955) 17
Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176 (1982) 18
Telectronics Proprietary, Ltd. v. Medtronic, Inc., 687 F. Supp. 832 (S.D.N.Y. 1988) 28
Texas & Pac. Ry. v. Abilene Cotton Oil Co., 204 U.S. 426 (1907) 25
Weidner v. INTELSAT, 392 A.2d 508 (D.C. 1978) 19

Constitutional Provisions, Statutes and Rules:

Communications Satellite Act of 1962, 47 U.S.C. §§ 701 *et seq.* (1982 and Supp. V 1987) ..... *passim*
Fed. R. Civ. P. 19 ..... 13, 14
Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, 99 Stat. 405 (1985) 11, 12, 27

TABLE OF AUTHORITIES—Continued

Page

International Organizations Immunities Act, 22 U.S.C. §§ 228 *et seq.* (1982 and Supp. V 1987) .. 19, 25
Sherman Act, 15 U.S.C. §§ 1, 2 (1988) ..... *passim*

Executive Branch Directives:

Executive Order No. 11,191, 3 C.F.R. 273 (1966) .. 9
Executive Order No. 11,966, 3 C.F.R. 90 (1978) 19
Executive Order No. 12,046, 3 C.F.R. 158 (1978) .. 9, 18
In re Establishment of Satellite Systems Providing International Communications, FCC Docket No. 84-1299, Report and Order (July 25, 1985) 12
Letter from Secretary of State George P. Shultz and Secretary of Commerce Malcolm Baldrige to Mark S. Fowler, Chairman of the Federal Communications Commission (Nov. 28, 1984), *reprinted in* 3 C.F.R. 254 (1985) 11
Memorandum of Understanding, signed by Departments of State and Commerce, FCC and COMSAT (Sept. 28, 1984) 10
Presidential Determination No. 85-2, 3 C.F.R. 254 (1985) 10, 11, 21
Procedures for U.S. Government Instruction of the Communications Satellite Corporation in its Role as U.S. Representative to the Interim Communications Satellite Committee, *reprinted in COMSAT Study*, 77 F.C.C. 2d 564 (1980) .. 9, 10, 29

Executive Agreements and United Nations Resolution:

Agreements Relating to the International Telecommunications Satellite Organization "INTELSAT," done Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971) ..... *passim*
Headquarters Agreement Between the Government of the United States of America and the International Telecommunications Satellite Organization, done Nov. 22, & 24, 1976, entered into force Nov. 24, 1976, 28 U.S.T. 2248, T.I.A.S. No. 8542 (1976) ..... *passim*

TABLE OF AUTHORITIES—Continued

Page

United Nations' General Assembly Resolution 1721, 1 U.N. GAOR Supp. (No. 17), U.N. Doc. A/5100 (1962) 5

Legislative Histories, Articles and Other Authorities:

Antitrust Problems of the Space Satellite Communication System: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 87th Cong., 2d Sess. (1962) 26

National Telecommunications and Information Administration, Report to Congress, *Long Range Goals in International Telecommunications and Information*, S.Prt. 98-22, 98th Cong., 1st Sess. (1983) 6

Restatement (Third) of Foreign Relations Law of the United States § 467 (1987) 19

Space Satellite Communications: Hearings Before the Subcomm. on Monopoly of the Select Comm. on Small Business, 87th Cong., 1st Sess. (1961) 24

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1038

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., and REYNOLD V. ANSELMO d/b/a PAN AMERICAN SATELLITE,

Petitioners,

v.

COMMUNICATIONS SATELLITE CORPORATION,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Pet. App. A1-15) is reported at 946 F.2d 168 (1991). The opinion of the United States District Court for the Southern District of New York (Pet. App. B1-22) is reported at 1990-2 Trade Cas. (CCH) ¶ 69,188 (1990).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition at 2.

STATUTES INVOLVED

In addition to those set forth in the Petition at 3, the following statutes, treaties and regulations are involved

in this case and are set forth in Respondent's Appendix ("Res. App."):[1]

U.S. General Assembly Res. 1721, 1 U.N. GAOR Supp. (No. 17), U.N. Doc. A/5100 (1962) (Res. App. 1a)

Executive Order No. 11,966, 3 C.F.R. 158 (1978) (Res. App. 6a)

Executive Order No. 12,046, 3 C.F.R. 158 (1978) (Selected Excerpts) (Res. App. 8a)

Executive Order No. 11,191, 3 C.F.R. 273 (1966) (Res. App. 16a)

Procedures for U.S. Government Instruction of the Communications Satellite Corporation in its Role as the U.S. Representative to the Interim Communications Satellite Committee, *reprinted in COMSAT Study*, 77 F.C.C. 2d 564 (1980) (Res. App. 19a)

Memorandum of Understanding, signed by Departments of State and Commerce, the FCC and COMSAT (Sept. 28, 1984) (Res. App. 23a)

Letter from Secretary of State George P. Schultz and Secretary of Commerce Malcolm Baldrige to Mark S. Fowler, Chairman of the FCC (Nov. 28, 1984), *reprinted in* 3 C.F.R. 254 (1985) (Res. App. 27a)

Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 ("FRAA"), Pub.L.No. 99-93, 99 Stat. 405 (1985) (Res. App. 29a)

In re Establishment of Satellite Systems Providing International Communications, FCC Docket No. 84-1299 (July 25, 1985) (Selected Excerpts) (Res. App. 33a)

[1] The materials contained in Respondent's Appendix appear in the Joint Appendix in the Court of Appeals and are included herein for the convenience of the Court. Hereafter all references to Respondent's Appendix will be to "Res. App."; all references to Petitioners' Appendix will be to "Pet. App.".

COUNTER-STATEMENT OF THE CASE

Respondent Communications Satellite Corporation ("COMSAT") is the statutorily-designated representative and Signatory to the International Telecommunications Satellite Organization ("INTELSAT"). For more than 25 years, INTELSAT has served as the international organization through which the United States and other member-nations have organized and operated a global satellite telecommunications system.

Petitioners' complaint alleges that actions and decisions of INTELSAT, agreed to by its member-nations (including the United States) and their official representatives (including COMSAT), hampered petitioners' ability to provide international satellite communications services in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2 (1988), and state common law. Petitioners allege a conspiracy among INTELSAT, its member-nations and their official representatives known as "Signatories." (Complaint, ¶ 27, 28; Pet. App. C17-27.)[2] Thus, although COMSAT is the sole defendant named in petitioners' complaint, this lawsuit is a direct challenge to the INTELSAT system and its decisions, taken collectively by its member-nations with respect to private international satellite systems, such as petitioners'.

---

[2] The acts said to be in furtherance of the alleged conspiracy involve:

(i) INTELSAT resolutions passed by its constituent assemblies (§§ 28(d), (k)-(n), (p)-(r), (t), (x));

(ii) INTELSAT decisions on pricing, procurement and deployment of satellite capacity, as well as INTELSAT personnel decisions (§§ 28(g), (h), (w), (x));

(iii) INTELSAT consultations on separate international satellite systems (§§ 28(b)-(f), (h)-(t)); and

(iv) INTELSAT consultations on separate satellite systems providing foreign domestic services and decisions by foreign nations with respect to the granting of operating agreements (§§ 28(f), (i)-(n), (p)-(t), (y)). (Pet. App. at C19-27).

Our government is committed by treaty to the INTELSAT global satellite system and to the consultation process established by international agreement in order to preserve that system. It is through INTELSAT, as well as through respondent COMSAT as the United States representative and Signatory to INTELSAT, that our government implements its foreign policy in the field of international satellite communications.

The international agreements which govern the operation of this global satellite system contain immunity provisions applicable to the actions and decisions of INTELSAT, its member-nations and their representatives and Signatories, including respondent. Accordingly, as both the district court and Second Circuit held, the complaint is not a permissible means by which petitioners may challenge the actions and decisions of INTELSAT or the conduct of respondent as the United States representative to INTELSAT.

Petitioners' complaint nevertheless seeks to undermine INTELSAT, to prevent our government from fulfilling its treaty obligations, and to frustrate United States policy to foster and support the INTELSAT global satellite system.[3] In almost every instance, petitioners' complaint challenges alleged conduct by respondent in its role as the United States representative or Signatory to INTELSAT,[4] or conduct that is alleged to be unlawful because it is dependent upon or intertwined with conduct by respondent in its role as Signatory.[5]

---

[3] The district court recognized that petitioners' complaint is a frontal attack on INTELSAT, its sovereign member-nations and their official representatives (including COMSAT). As the district court found, conduct of INTELSAT and its member nations "permeates the allegations even under the most liberal reading of the complaint." (Pet. App. at B20-21).

[4] *E.g.*, Complaint §§ 28(b)-(e), (g)-(h), (j)-(n), (p)-(r), (t), (w), (x). (Pet. App. at C18-27).

[5] *E.g.*, Complaint §§ 28(f), (i), (o), (s), (y). (Pet. App. C19-27).

Formation and Role of INTELSAT and COMSAT

Since the advent of the space age, the nations of the world have agreed that "the exploration and use of outer space should be only for the betterment of mankind and to the benefit of States irrespective of the stage of their economic or scientific development." U.N. General Assembly Res. 1721, 1 U.N. GAOR Supp. (No. 17) at 6, U.N. Doc. A/5100 (1962) (Res. App. at 1a). In recognition of this resolution, Congress enacted the Communications Satellite Act of 1962 ("CSA"), 47 U.S.C. §§ 701 *et seq.* (1982 and Supp. V 1987). (Pet. App. at D2-23). The declared policy of the CSA was "to establish, in conjunction and in cooperation with other countries," a communications satellite system "which will be responsive to public needs and national objectives, which will serve the communications needs of the United States and other countries, and which will contribute to world peace and understanding." § 701(a).

The CSA created COMSAT, respondent herein, as the only designated United States participant in the global system, subject to governmental regulation. § 701(c). *See COMSAT v. FCC*, 836 F.2d 623, 625 (D.C. Cir. 1988). In that role, the CSA required and authorized respondent to "plan, initiate, construct, own, manage and operate" the global satellite communication system in conjunction with foreign governments. Thus, respondent is a unique entity created by Congress for the very purpose of serving, in its role as Signatory to INTELSAT, as our government's representative in carrying out United States foreign policy in the field of international satellite communications. § 735(a)(1).

Pursuant to the CSA, the United States joined with other nations in 1964 to form INTELSAT, a not-for-profit international organization headquartered in Washington, D.C. Its mission was to establish a global satellite communications system providing expanded worldwide telecommunications services. Today, INTELSAT has 121 member-nations and its satellites provide international

telecommunications services to more than 170 countries, territories and dependencies as well as domestic telecommunications services to more than 40 nations. INTELSAT has been acclaimed as "a triumph of U.S. foreign policy." National Telecommunications and Information Administration, Report to Congress, *Long Range Goals In International Telecommunications and Information*, S. Prt. 98-22, 98th Cong., 1st Sess. 114 (1983). The functions and authority of INTELSAT, and the rights and obligations of its member-nations, including the United States, and their official representatives, including COMSAT, are prescribed by international executive agreements, known as the "Definitive Agreement" (Pet. App. at D111-190), the "Operating Agreement" (Pet. App. at D191-226), and the "Headquarters Agreement" (Pet. App. at D227-234).[6]

Article XIV of the Definitive Agreement sets forth procedures, known as the consultation process, that must be followed in the event that any member-nation desires to establish separate, non-INTELSAT, international or domestic satellite communications facilities. The purpose of this consultation process is to assure that any separate satellite system is compatible with INTELSAT's system and its global mission.[7] With regard to *international*

---

[6] INTELSAT's organizational structure consists of an Assembly of Parties, comprised of the 121 member-nations, which sets the "general policy and long-term objectives of INTELSAT . . . ." (Definitive Agreement, Art. VII(c)(i)); a Meeting of Signatories in which each member-nation is represented by "a telecommunications entity, public or private" as its official "Signatory" (*id.* at Art. II(b)); and a Board of Governors comprised of 29 Signatories which is responsible for the oversight of INTELSAT in accordance with the Definitive and Operating Agreements and the policy determinations of the member-nations sitting as the Assembly of Parties. *Id.* at Art. I, X(a). The Board of Governors advises the Assembly of Parties on proposals for separate systems such as petitioners'. *Id.* at Art. XIV(c), (d).

[7] Since international systems (such as petitioners') implicate the foreign relations of INTELSAT's member-nations, the member-nations themselves, sitting as the Assembly of Parties, have the re-

satellite communications (*i.e.*, between two or more nations), Article XIV(d) requires that *prior* to the establishment, acquisition or utilization of non-INTELSAT facilities to meet a nation's international communications service requirements, the proposing nation shall:

> furnish all relevant information to and *shall consult with the Assembly of Parties, through the Board of Governors*, to ensure technical compatibility of such facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned INTELSAT space segment and to avoid significant economic harm to the global system of INTELSAT. *Upon such consultation, the Assembly of Parties*, taking into account the advice of the Board of Governors, *shall express, in the form of recommendations, its findings regarding the considerations set out in this paragraph*, and further regarding the assurance that the provision or utilization of such facilities shall not prejudice the establishment of direct telecommunication links through the INTELSAT space segment among all the participants.

(Pet. App. D151-152) (emphasis added).[8]

The INTELSAT agreements also contain express immunity provisions applicable to INTELSAT, its member-nations and their Signatories. Article XV(c) of the Definitive Agreement requires each member-nation to grant appropriate privileges, exemptions and immunities to INTELSAT, to its member-nations and *to Signatories*, with respect to the performance of their functions and

---

sponsibility and authority to oversee the consultation process and to issue, by a two-thirds majority, the requisite findings on technical compatibility and economic harm. Definitive Agreement, Art. VIII(e), XIV(e).

[8] Article XIV(c) of the Definitive Agreement mandates a similar procedure for technical consultation of non-INTELSAT facilities which are to be used to provide domestic telecommunications services.

duties. Article XV(c) committed the United States, as the Party in whose territory the INTELSAT headquarters is located, to conclude a Headquarters Agreement granting "the appropriate privileges, exemptions and immunities to INTELSAT, to its officers, and to those categories of its employees specified in [the] . . . Headquarters Agreement, *to Parties and representatives of Parties, to Signatories and Representatives of Signatories . . . .*" (Pet. App. at D153) (emphasis added). Pursuant to this directive, the United States provided in paragraph 16 of the Headquarters Agreement that the:

> officers and employees of INTELSAT, *the representatives of the Parties and of the Signatories . . . shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions, ...*

(Pet. App. at D232) (emphasis added).

Pervasive Control and Supervision of Respondent As the United States Signatory to INTELSAT

Since its inception, respondent, as the United States Signatory to INTELSAT, has been subject to extensive supervision and direction by the Executive Branch "to assure that [COMSAT's relations with foreign governments and international organizations] shall be consistent with the national interest and foreign policy of the United States." 47 U.S.C. § 721(a)(4) (Pet. App. at D6-7).[9]

---

[9] Pursuant to the CSA, the President appoints three members of COMSAT's Board of Directors, with the advice and consent of the Senate. 47 U.S.C. § 733(a) (Pet. App. at D13). The CSA also assigns to the National Aeronautics and Space Administration ("NASA") and the Federal Communications Commission ("FCC") additional supervisory and regulatory roles over COMSAT's activities. 47 U.S.C. at § 721(b), (c) (Pet. App. at D7-11). Among the responsibilities assigned to the FCC is ratemaking authority over COMSAT with respect to charges for INTELSAT services. 47 U.S.C. at § 721(c)(5) (Pet. App. at D10). The CSA also requires that COMSAT obtain permission from the FCC in order to partici-

Pursuant to these directives, the President issued Executive Order No. 12,046 which mandates that "[w]ith respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies." Executive Order No. 12,046, 3 C.F.R. 158, § 5-201 (1978) (Res. App. 14a-15a) (emphasis added). The Secretary of State has been expressly invested with the responsibility of "*instructing [COMSAT] in its role as the designated United States representative to [INTELSAT]*" *and for "direct[ing] the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962. . . ."* *Id.* at § 5-202(a) (Res. App. at 15a) (emphasis added). *See also* Executive order No. 11, 191, 3 C.F.R. 273 (1966) (Res. App. 16a-18a).[10]

The instructional process through which the Secretary of State directs COMSAT's participation in INTELSAT is formalized in written procedures. *See* Procedures for U.S. Government Instruction of the Communications Satellite Corporation in its Role as U.S. Representative to the Interim Communications Satellite Committee, *reprinted in COMSAT Study*, 77 F.C.C.2d 564 (1980) (Res. App. at 19a-22a). Those procedures provide that in its role as United States representative to INTELSAT, "[re-

---

pate in INTELSAT procurement programs or to provide services via INTELSAT satellites. 47 U.S.C. § 721(c)(7) (Pet. App. at D10-11). The President, respondent and the FCC are required annually to report to Congress on the activities and accomplishments of respondent. 47 U.S.C. § 744 (Pet. App. at D23).

[10] The President also directed the Secretary of Commerce to conduct a "continuous review" of the satellite communications system, including the activities of COMSAT, and to coordinate governmental activity to ensure "that there is full and effective compliance at all times with the policies set forth" in the CSA. Executive Order No. 12,046, § 2-301(b), (c) (Res. App. at 10a).

spondent] exercises . . . an important foreign policy function on behalf of the U.S. Government." *Id.* at 811 (Res. App. at 19a). Accordingly, "[t]he manner in which these instructions are formulated and conveyed to [respondent] is itself a critical policy matter." (*Id.* at 20a). Respondent must circulate in advance the proposed agenda for each INTELSAT meeting to designated government officials. The Department of State is then required to "instruct [respondent] that it shall not take action on such agenda items until it receives U.S. Government instructions," which instructions are to be issued to respondent expeditiously. (*Id.* at 21a). Pursuant to a 1984 Memorandum of Understanding between the Departments of State and Commerce, the FCC and respondent, the practice has been that "*[t]he Department of State will continue to issue instructions prior to or during each INTELSAT meeting and [respondent] agrees to be bound by such instructions.*" Memorandum of Understanding, signed by the Departments of State and Commerce, the FCC and COMSAT at ¶ 8 (Sept. 28, 1984) (Res. App. at 25a) (emphasis added).

Consideration of Separate Systems

Commencing in 1983, the Federal Communications Commission received several applications for non-INTELSAT communications satellite systems by U.S. companies, including an application from petitioners. Thereafter, in 1984 President Reagan issued Presidential Determination 85-2, pursuant to his authority and responsibility to determine whether additional international satellite systems were "required in the national interest" under sections 701(d) and 721(a) of the CSA. Presidential Determination No. 85-2, 3 C.F.R. 254 (1985) (Pet. App. at D38). While finding that separate satellite systems were in the national interest, the President also determined that the development of any separate system must comply with United States international agreements and commitments

to INTELSAT and its member-nations. (*Id.*) Consequently, the President directed the Secretaries of State and Commerce to "inform the Federal Communications Commission of criteria necessary to ensure [that] the United States" consults with INTELSAT before final authorization of any separate system "in order to meet its obligations" under the Definitive Agreement. (*Id.*)

Pursuant to this Presidential Determination, the Secretaries of State and Commerce jointly prescribed, *inter alia*, the following requirements that must be satisfied *prior* to final FCC authorization of any separate satellite system:

* * * *

> (2) *one or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party* under Article XIV(d) of the INTELSAT Agreement to ensure technical compatibility and to avoid significant economic harm.

Letter from Secretary of State George P. Shultz and Secretary of Commerce Malcolm Baldrige to Mark S. Fowler, Chairman of the Federal Communications Commission (Nov. 28, 1984) (Res. App. at 27a-28a) (emphasis added).

The Executive Branch's well-considered resolution of the separate satellite system issue in a way that supports such systems while honoring our government's binding commitments to INTELSAT was expressly endorsed and ratified by Congress in the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 ("FRAA"), Pub. L. No. 99-93, 99 Stat. 405 (1985) (Res. App. at 29a-32a). The FRAA requires compliance with the conditions set forth in Presidential Determination 85-2 as well as a determination that "one or more foreign authorities have authorized the use of such system consistent with such conditions" as a precondition to consultation with INTELSAT. FRAA § 146(b)(2) (Res. App. at 30a).

The FRAA also restates, as a matter of United States statutory law, the requirements set forth in Article XIV(d) of the Definitive Agreement that any separate satellite system must be technically compatible with and avoid significant economic harm to the INTELSAT system. § 146(a)(2)(A) & (B) (Res. App. at 29a-30a).

On July 25, 1985, the FCC issued a Report and Order regarding petitioners' application as well as other pending applications for separate systems. *In re Establishment of Satellite Systems Providing International Communications*, FCC Docket No. 84-1299 (July 25, 1985) ("Report and Order") (Res. App. at 33a-43a). Although the Report and Order generally recognized the benefits of separate satellite systems, it did not constitute final approval of any particular separate satellite system. The Report and Order expressly stated that the Commission would not issue a final license for the operation of any separate system "*until the United States has completed coordination of that system with INTELSAT* pursuant to Article XIV(d) of the INTELSAT Agreement *and we have been informed by the Department of State that the United States has fulfilled its obligation under Article XIV(d).*" (*Id.* at 41a) (emphasis added).

In September 1985, the FCC preliminarily approved petitioners' application to construct and operate a separate satellite system. Following favorable Article XIV(d) consultation and a favorable resolution by the Assembly of Parties, petitioners received final FCC approval to launch its PAS I satellite for communications between the United States and Peru in September 1987. Subsequently, petitioners have been successful without exception in their Article XIV(d) consultations, having obtained to date approval from the INTELSAT Assembly of Parties to provide international satellite services to over 36 countries.[11] Following Article XIV(c) consulta-

[11] These countries include: Peru, the United Kingdom, Germany, Sweden, Luxembourg, Ireland, Costa Rica, the Dominican Republic,

tions, petitioners have also received INTELSAT approval for the provision of domestic satellite services in over 19 countries.[12] Thus, contrary to the complaint, petitioners have not been deterred from successfully providing international satellite services throughout most of Western Europe, Latin America and the Caribbean.

Decisions of the Lower Courts

Respondent moved to dismiss petitioners' complaint on a number of grounds including express and implied immunity, political question, act of state, lack of extraterritorial jurisdiction, *Noerr-Pennington*, and failure to join indispensable parties under Fed.R.Civ.P. 19. On September 14, 1991, the district court granted respondent's motion to dismiss on the ground that international executive agreements to which the United States is a party, as well as the Executive Branch's pervasive control over respondent's activities as Signatory, confer upon respondent immunity from petitioners' claims. (Pet. App. at B18). The district court referred to Paragraph 16 of the INTELSAT Headquarters Agreement, which provides immunity from suit to "*the representatives of the Parties* and of the Signatories." (*Id.* at B13) (emphasis added by the court). Since respondent is the representative of the United States party to INTELSAT, as the complaint repeatedly alleges (Complaint ¶¶ 11, 12, 23, 28(a)-(c); Pet. App. at C6-7, 14, 17-18) and as expressly provided by Executive Order, the district court concluded that the immunities recited in the Headquarters Agree-

---

Brazil, Guatemala, Honduras, the Bahamas, Portugal, Argentina, Italy, France, Austria, the Netherlands, Denmark, Switzerland, Monaco, Belgium, Spain, Greece, Mexico, Barbados, Haiti, Panama, Trinidad and Tobago, Bolivia, Colombia, Ecuador, Venezuela, Uruguay and Paraguay.

[12] These countries include: Peru, the United Kingdom, Chile, Spain, Italy, Portugal, the Netherlands, Haiti, Guatemala, the Bahamas, Argentina, Bolivia, Colombia, Ecuador, Uruguay, Paraguay, Venezuela, Honduras and Panama.

ment apply to respondent. (Pet. App. at B13). The district court further ruled that Paragraph 16 of the Headquarters Agreement "implements the directive of Art. XV(c) of the Definitive Agreement," in which the member-nations of INTELSAT, including the United States, agreed to confer "appropriate privileges and immunities to Intelsat . . . to Parties . . . [and] to Signatories [*e.g.*, Comsat] and representatives of Signatories." (*Id.*)

After a detailed analysis of the CSA and its legislative history, the district court concluded that the "antitrust consistency" provision in § 701(c) relates only to "the activities of Comsat and its owners as communications common carriers and not to Comsat's activities as United States representative to the global satellite system subject to Executive Branch regulation." (*Id.* at B16). Section 701(c) should not be read more broadly to subject COMSAT to suit in its role as United States representative and Signatory to INTELSAT, the district court found, because "Congress could not have intended to require Comsat to participate in Intelsat subject to Executive Branch directives and, at the same time, have intended that Comsat proceed at its own antitrust peril in carrying out that official role." (*Id.* at B14).[13]

---

[13] In the alternative, the district court dismissed the complaint for failure to join indispensable parties, *viz.* INTELSAT, its member-nations and their Signatories, under Fed.R.Civ.P. 19. (Pet. App. B19). The district court noted that "[t]he lion's share of the complaint's allegations depict concerted action between Comsat and Intelsat's member-nations" (*id.*) and further noted that "[respondent] has no role in many of the kinds of actions alleged to have injured [petitioners] and to have been undertaken by individual foreign nations or groups of foreign nations." (*Id.* at B20). Finally, the district court dismissed petitioners' state law claims for failure to allege the requisite elements of a claim for interference with prospective advantage. (*Id.* at B21). The district court did not address the other grounds for dismissal raised by respondent.

On September 30, 1991, the Second Circuit affirmed the district court's decision that respondent was immune from antitrust challenge in its role as Signatory to INTELSAT because "exposure of [respondent] to antitrust liability *in its role as United States signatory to INTELSAT* is entirely inconsistent with the responsibilities Congress entrusted to COMSAT under the CSA." (Pet. App. A12) (emphasis in original). The Second Circuit further stated in this regard:

> COMSAT, as United States Signatory to INTELSAT, must participate in the consultations that determine to what extent competing satellite systems will be permitted under Article XIV(d) of the Definitive Agreement. Having created COMSAT to wield monopoly power, along with the other participants in a global satellite system, Congress did not expect that corporation to face antitrust liability in deciding, as a member of INTELSAT, whether and to what extent to permit competition.

(Pet. App. at A12).

In reaching its decision on immunity, the Second Circuit also carefully reviewed the INTELSAT Agreements and found that the Definitive Agreement and the Headquarters Agreement (which implements the Definitive Agreement) must be read as providing immunity to "representatives of Parties and to Signatories" such as respondent. (*Id.*)

The Second Circuit also agreed with the district court that the "'antitrust consistency clause' in Section 701(c) of the CSA applies only to [respondent's] role (and that of its owners) as common carrier and not to its role as United States representative to INTELSAT." (*Id.*) In so ruling, the Second Circuit found that "[t]he principal antitrust concern voiced within Congress during the consideration of the CSA, once the fundamental decision was made to create a private corporation with monopoly powers, was that the common carriers participating in ownership of COMSAT would use their ownership posi-

tion for private anti-competitive purposes." (*Id.* at A12-13). There was, however, "no hint in this catalogue of concerns that [respondent's] role as participant in INTELSAT must conform to antitrust limitations." (*Id.* at A13).

Finally, the Second Circuit carefully reviewed the complaint allegations and expressly found that they were "directed primarily to actions taken by [respondent] acting as a Signatory to INTELSAT . . . ." (*Id.*) Nonetheless, the Second Circuit reversed and remanded to allow petitioners to "winnow out the few allegations that arguably" are based solely on non-immune conduct; that is, conduct undertaken in COMSAT's role as a common carrier. (*Id.*)[14]

Subsequent to the Second Circuit's reversal and remand to the district court, petitioners filed on November 13, 1991, a second amended complaint which is now pending in the United States District Court for the Southern District of New York.

REASONS FOR DENYING THE PETITION

The decision below is correct and presents no issue that warrants further review by this Court. The Second Circuit applied settled principles of law to this case, and reached a plainly correct result that does not conflict with any decision of this Court or of any other court of appeals.

Further, the Second Circuit's decision was largely based on the meaning and effect of the INTELSAT

---

[14] Dismissal of petitioners' state law claims for tortious interference with business opportunities was also affirmed by the Second Circuit "since all of [the] allegations [in petitioners' state law claim] concern COMSAT's consultative activity within INTELSAT relating to the authorization of a competing satellite system. Those are plainly 'Signatory' activities." (Pet. App. at A15). Leave to amend was granted with respect to petitioners' state law claims, as well. (*Id.*)

Agreements and § 701(c) of the Communications Satellite Act, 47 U.S.C. §§ 701-744 (1988) ("CSA") (Pet. App. at D2-23). As petitioners readily admit, "*[t]he question presented by this petition has not been addressed before, and may not be addressed again.*" (Pet. 17) (emphasis added). Thus, the Second Circuit's decision presents no question of general public importance warranting this Court's review. *See e.g., Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923); *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955) (issues must be "beyond the academic or the episodic").

The Second Circuit Crafted a Limited Immunity Based, in Part, Upon Immunity Provisions in the INTELSAT Agreements

The first argument proffered by petitioners is that the Second Circuit's decision rests upon a finding of implied immunity and grants to respondent broad, unlimited immunity from the antitrust laws. (Pet. at 17). On both points, petitioners misstate the Second Circuit's holding, which crafted a narrowly drawn immunity based, in part, upon the express immunity provisions in the INTELSAT Agreements.

Contrary to petitioners' brief, the immunity found by the Second Circuit to be applicable here is *not* "largely by implication." (*Id.*) The pertinent INTELSAT Agreements confer immunity upon respondent for actions taken in its role as Signatory and both the district court and the Second Circuit correctly so held. The Definitive Agreement directed each member-nation of INTELSAT to grant appropriate immunities to Signatories, among others. This directive was implemented by paragraph 16 of the Headquarters Agreement, pursuant to which the United States bound itself to provide immunity from suit and legal process to the "officers and employees of INTELSAT, *the representatives of the parties and of*

the Signatories . . . relating to acts performed by them in their official capacity and falling within their functions." (Pet. App. at D232) (emphasis added).[15]

Moreover, the immunity from the antitrust laws that the lower courts afforded respondent is not overbroad or unrestricted, but rather is limited to its activities as Signatory.[16] The Second Circuit was compelled to find such limited immunity because "exposure of [respondent] to antitrust liability *in its role as United States Signatory to INTELSAT* is entirely inconsistent with the responsibilities Congress entrusted to [respondent] under the CSA." (Pet. App. at A12) (emphasis in original). The CSA expressly created respondent as the official representative of our nation's interests in the global satellite system (47 U.S.C. § 701(c); Pet. App. at D2), and the President conferred upon the Secretary of State the responsibility for issuing instructions to respondent "in its role as the designated United States representative to [INTELSAT]." Executive Order No. 12,046, § 5-202(a) (Res. App. at 15a). As the United States representative, respondent is the official instrument of the United States in carrying out U.S. policy in the field of international satellite communications subject to Executive Branch direction and control.

In addition to express immunity, respondent is entitled to derivative immunity based upon INTELSAT's im-

---

[15] The holdings of both the district court and Second Circuit that the express provisions of the Headquarters and Definitive Agreement together confer immunity upon respondent in its role as the official United States representative to INTELSAT, correctly discharge their judicial function in intepreting international agreements, namely, "giving effect to the intent of the Treaty parties." *Sumitomo Shoji Am. Inc. v. Avagliano*, 457 U.S. 176, 185 (1982). *See Chan v. Korean Airlines, Ltd.*, 109 S. Ct. 1676, 1683 (1989) ("[w]e must thus be governed by the treaties—solemnly adopted by the governments of many separate nations . . ."). *See also In re Ross*, 140 U.S. 453, 475 (1891).

[16] The district court explicitly recognized that "the antitrust laws must be construed liberally and that antitrust immunity is disfavored." (Pet. App. at B12).

munity from suit. The lower courts correctly rejected petitioners' effort to attack INTELSAT, which is immune from suit, through the indirect route of suing respondent for participating in official INTELSAT activities. *See, e.g., International Paper Co. v. Ouellette*, 479 U.S. 481, 495 (1987) (barring suits that seek to "do indirectly what they could not do directly").

In designating INTELSAT as an international organization entitled to immunity under the International Organizations Immunities Act, 22 U.S.C. §§ 288 *et seq.* (1988) ("IOIA") (Pet. App. at D24-37),[17] the President specified that INTELSAT is "entitled to enjoy the privileges, exemptions and immunities conferred by the [IOIA]." Executive Order No. 11,966, 3 C.F.R. 158 (1978) (Res. App. at 7a). This expansive language confirms the President's intention to confer upon INTELSAT the full range of statutory immunities. But INTELSAT's immunity from suit would be rendered meaningless if petitioners were allowed to sue any Signatory for its conduct as Signatory, especially where, as here, such conduct was allegedly undertaken in concert with

---

[17] INTELSAT was most recently so designated by President Ford on January 19, 1977. Executive Order No. 11,966, 3 C.F.R. 90 (1978) (Res. App. at 7a). *See Weidner v. INTELSAT*, 392 A.2d 508, 510 (D.C. 1978). The IOIA defines an "international organization" as "a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress . . . and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter." 22 U.S.C. § 288 (Pet. App. at D24). *See Restatement (Third) of Foreign Relations Law of the United States* §§ 467 (comment f), 467(2) (1987); *Boimah v. United Nations General Assembly*, 664 F. Supp. 69, 71 (E.D.N.Y. 1987). The IOIA provides "immunity from suit and every form of judicial process," 22 U.S.C. § 288a(b) (Pet. App. at D26), and specifies that the property and assets of an international organization, wherever located and by whomever held, are immune and that the organization's archives "shall be inviolable." 22 U.S.C. § 288a(c) (Pet. App. at D26).

INTELSAT, its member-nations and their official representatives.

In finding immunity for respondent in its role as a Signatory to INTELSAT, the Second Circuit afforded respondent the narrowest immunity possible consistent with the express intent and provisions of the CSA, the Executive Branch directives and control over respondent as Signatory and the INTELSAT Agreements.[18] At the same time, the Second Circuit reversed and remanded to allow petitioners to file an amended complaint limited to "allegations of anticompetitive conduct [if any] by COMSAT in its 'separate role'" as common carrier. (Pet. App. at A13). Petitioners have subsequently filed an amended complaint which is now pending in the district court.

The Petitioners' Complaint, Not the Second Circuit Decision, Would Undermine the 1984 Presidential Determination

Petitioners next contend that the Second Circuit's decision is inconsistent with and undermines the 1984 Presi-

---

[18] The Second Circuit rejected petitioners' argument that the mere semantic differences between Article XV of the Definitive Agreement and paragraph 16 of the Headquarters Agreement negated the clear intent of the INTELSAT Agreements to afford immunity to all Signatories. Indeed, in reaching its conclusion on immunity, the Second Circuit reasoned that:

> The Headquarters Agreement implements the Definitive Agreement. The Definitive Agreement requires each party to grant appropriate immunities "to INTELSAT . . . to Parties and representatives of Parties, *to Signatories* and representatives of Signatories." Definitive Agreement Art. XV(c) (emphasis added). Though this phrasing arguably distinguishes between "representatives of Parties" and "Signatories," its primary significance lies in its explicit direction to immunize "Signatories." . . . [I]t places no strain on the phrase "representatives of the Parties" to place signatories within that category. COMSAT is "the designated United States representative to" INTELSAT, *see* Executive Order No. 12,046.

(Pet. App. at A11).

dential Determination that separate systems are "'required in the national interest.'" (Pet. at 17). Petitioners, however, fundamentally misstate the nature and scope of the Presidential Determination.

The 1984 Presidential Determination created a careful balance between the development of separate, non-INTELSAT systems and continued fidelity to INTELSAT's existing global system. The President specifically found that while separate satellite systems were in the national interest, any effort to establish such systems must comply with our government's international agreements and commitments to INTELSAT and its member-nations. *The Determination specifically recognizes and promotes the policy of the CSA by allowing private systems only if certain pre-conditions are met, including compliance with the consultation procedures under the INTELSAT Agreements.*[19] Consistent with Article XIV of the INTELSAT Definitive Agreement, the President directed the United States to consult with INTELSAT *before* final authorization of any separate system in order to meet our nation's obligations under that Agreement.

In contrast, petitioners' complaint ignores the framework of the CSA, the INTELSAT Agreements and our government's stated foreign policy objectives in the area of international satellite communications. Petitioners' complaint seeks by means of a private lawsuit to negate our government's binding international commitments, including those specifically reaffirmed in the 1984 Presidential Determination, in favor of the petitioners' own narrow self-interest. It is the petitioners' complaint, not the Second Circuit's decision, which seeks to undermine the 1984 Presidential Determination, as well as

---

[19] As the Second Circuit recognized: "Congress enacted the Communications Satellite Act of 1962 to implement the national policy of establishing 'in conjunction and in cooperation with other countries, as expeditiously as practicable, a commercial communications satellite system.'" (Pet. App. at A3).

U.S. foreign policy in the field of international satellite communications carefully formulated and established over the last 25 years.

The Lower Courts' Reading of Section 701(c) is Compelled by the Language, Structure and Purpose of the CSA and its Legislative History

The third ground for review proffered by petitioners is that the Second Circuit's grant to respondent of limited immunity conflicts with section 701(c) of the CSA which provides, in part, that respondent's activities should remain "consistent with" the antitrust laws. (Pet. at 20-21).[20] As the Second Circuit correctly held, however, the "antitrust consistency" clause in section 701(c) "applies only to COMSAT's role (and that of its owners) as common carrier and not to its role as United States representative to INTELSAT." (Pet. App. at A12). Having decided that respondent should be created as a private corporation with the sole right of access to the global satellite system, Congress included the "antitrust consistency" language to address the concern "that the common carriers [such as AT&T] participating in ownership of COMSAT would use their ownership position for private anti-competitive purposes." (*Id.* at A12-13).[21]

It is evident, even from the excerpts of legislative history that petitioners quote in the Petition, that the antitrust concern voiced in Congress related solely to the

---

[20] Petitioners repeatedly misquote the language of § 701(c) by arguing that it requires respondent's conduct to be "subject to" the antitrust laws. (*See, e.g.*, Pet. at 5, 20).

[21] Section 743(b)(2) of the CSA contains detailed provisions governing the extent to which communications common carriers may own COMSAT's shares. Indeed, as originally enacted, this section reserved 50% of COMSAT's shares for purchase by communications common carriers. Pub. L. No. 87-624; § 304(b)(2), 76 Stat. 419, 424 (1962), *amended by* Pub. L. No. 97-410, 96 Stat. 2043, 2045 (1983).

activities of COMSAT's owners as communications common carriers, and not to COMSAT's activities as the United States representative to the global satellite system subject to Executive Branch supervision.[22]

For instance, petitioners quote the following testimony of Assistant Attorney General Nicholas Katzenbach before the Senate Commerce Committee in response to antitrust concerns of Senator Estes Kefauver:

> Indeed, the whole thrust of the Department of Justice's participation in this bill has been to make the communications system more competitive and to use this as a device for ensuring that no single carrier would get monopoly control over this great new satellite system.

(Pet. at 7). The concern that common carriers such as AT&T would dominate the newly formed corporation through their ownership role in COMSAT is further highlighted in another portion of Mr. Katzenbach's testimony quoted in petitioners' Petition:

> Let me be clear. *It does exempt to the extent that it permits these carriers to participate in this corporation, which could conceivably otherwise be a joint venture, which would be precluded by the antitrust laws. To the extent that they are permitted by this law to invest in this corporation, it modifies what might otherwise be the situation.*
>
> Beyond that, as I have stated, I don't think that it would modify the antitrust laws any further than that. It has been my understanding that *those who*

---

[22] The treaties governing INTELSAT, including the Definitive and the Headquarters Agreements, were signed almost a decade subsequent to the legislative debate on the CSA. It strains credibility to suggest, as petitioners must, that the Executive Branch was unaware of the "antitrust consistency" language in section 701(c) of the CSA when promulgating the immunity provisions of the INTELSAT Agreements. Only when the "antitrust consistency" lanugage is read in the context of Congressional concern over the ownership of COMSAT, can section 701(c) be interpreted in a manner compatible with the INTELSAT Agreements.

> *have said it was modifying the antitrust laws have had simply that point in mind.* But I would have no objection to explicit provisions that stated that the antitrust laws were continued to be in full force and effect *with respect to the participants in this venture.*

(Pet. at 7-8) (emphasis added). Indeed, as the district court specifically recognized, the Department of Justice defined the phrase "consistent with the antitrust laws" as follows:

> [T]he Department of Justice believes that to be *consistent with the antitrust laws* any plan adopted must meet certain conditions. These conditions are:
>
> (1) All interested communication common carriers be given an opportunity to participate in the ownership of the system;
>
> (2) All interested communication common carriers be given unrestricted use on nondiscriminatory terms of the facilities of the system whether or not they elect to participate in ownership;
>
> (3) All interested parties engaged in the production and sale of communication and related equipment be given the opportunity to participate in ownership of the system; and
>
> (4) All interested parties engaged in the production and sale of communication and related equipment be given unrestricted opportunity to furnish such equipment to the system whether or not they elect to participate in ownership.

Space Satellite Communications: Hearings Before the Subcomm. on Monopoly of the Select Comm. on Small Business, 87th Cong., 1st Sess. 29 (1961) (statement of Lee Loevinger, Assistant Attorney General, Antitrust Division) (Pet. App. at B16-17). As the Second Circuit duly noted, this "catalogue of concerns" was incorporated in section 701(c) in the very sentence that concludes with the "antitrust consistency" clause:

> It is the intent of Congress that all authorized users shall have nondiscriminatory access to the system; that maximum competition be maintained in the provision of equipment and services utilized by the system; that the corporation created under this chapter be so organized and operated as to maintain and strengthen competition in the provision of communications services to the public; and that the activities of the corporation created under this chapter and of the persons or companies participating in the ownership of the corporation shall be consistent with the Federal antitrust laws.

(Pet. App. at A12-13).

In sum, the lower courts correctly rejected petitioners' overbroad construction of the "antitrust consistency" clause in § 701(c) that would negate the immunity essential to respondent's activities as the United States Signatory and abrogate our government's binding obligations to INTELSAT and its member-nations. As recently stated in *Finnegan v. Campeau Corp.*, 915 F.2d 824, 826 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1624 (1991), it should not be concluded "that Congress was so muddled that it gave with the right hand . . . that which it then took away with the left hand of antitrust law . . . ." *See also Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907) ("the act cannot be held to destroy itself"). Only a reading of section 701(c) that does not subject respondent to antitrust claims in its role as Signatory, but rather limits its application to respondent's conduct as common carrier, permits the provisions and policies of the CSA, the subsequent Presidential directives, the INTELSAT Agreements and the IOIA to be given effect and to be read harmoniously.

Limited Immunity for Respondent in its Role as Signatory is Compelled by the CSA and the Executive Branch's Pervasive Regimen for Directing Respondent in that Role

Petitioners also take issue with the Second Circuit's conclusion that " 'Congress could not have intended to

require Comsat to participate in Intelsat subject to Executive Branch directives, and, at the same time, have intended that Comsat proceed at its own antitrust peril in carrying out that official role." (Pet. App. at A12). Petitioners incredulously argue that "this is exactly what Congress did expect." (Pet. at 21). However, as Assistant Attorney General Katzenbach testified in hearings on the CSA, "[T]he mere doing of what [COMSAT is] permitted to do under this bill is not itself going to result in an offense against the Sherman Act." *Antitrust Problems of the Space Satellite Communication System: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 87th Cong., 2d Sess. 58 (1962) (testimony of of Asst. Atty Gen. Katzenbach) (Pet. App. at A13).

Finding limited immunity for respondent in its role as the United States representative and Signatory to INTELSAT not only is required by the language, structure and purpose of the CSA, but also is necessary to ensure that the statutory scheme for implementing U.S. foreign policy with respect to international satellite communications can "work as it was intended." *Gordon v. NYSE, Inc.*, 422 U.S. 659, 691 (1975). In contrast, petitioners' argument ignores both the framework of the CSA and our government's stated foreign policy objectives.

In petitioners' view, respondent is at risk under the antitrust laws whenever respondent proceeds, under the supervision and direction of the Executive Branch, to vote on resolutions at INTELSAT meetings, to participate in Article XIV consultations or to participate in INTELSAT pricing or procurement decisions. But those actions are plainly within the statutory grant of authority to respondent to "plan, initiate, construct, own, manage, and operate" the global communications satellite system. 47 U.S.C. § 735(a)(1) (Pet. App. at D19).

Under petitioners' theory, any vote by respondent at an INTELSAT meeting or any INTELSAT resolution not

to petitioners' liking could form the basis for a claim against respondent for unlawful monopolization or conspiracy with other INTELSAT Signatories. But, as both the district court and the Second Circuit recognized, respondent's statutory mandate is to participate in just such INTELSAT meetings, resolutions and decisions, under the direction of the Executive Branch. (Pet. App. at A12).

In short, under petitioners' theory, respondent can take no action in its role as Signatory without risking antitrust liability. Indeed, under petitioners' theory, any act by respondent to maintain, preserve or strengthen the global satellite communications system could be alleged to be an act of monopolization. But, as the Second Circuit recognized, Congress expressly intended that the global system would be maintained, preserved and strengthened; and it would violate the Congressional mandate in the CSA for respondent as the official United States representative to act otherwise. (*Id.*)[23]

While conceding that respondent is not liable under the antitrust laws for carrying out instructions or directives of the United States Government, petitioners argue that they seek to hold respondent liable only for anticompetitive activities which it allegedly "has entered into at Intelsat purely in its discretionary functions, and not by reason of any governmental directive or instruction." (Pet. at 23-24). This argument falls short for a number of reasons.

First, the complaint makes no distinction between alleged conduct of respondent as Signatory in carrying out the government's instructions and other alleged conduct by respondent as Signatory. Petitioners first raised this *ultra vires* argument in their reply brief in the Second

---

[23] Indeed, as recently as 1985, "[t]he Congress declare[d] that it is the policy of the United States as a party to [INTELSAT], to foster and support the global commercial communications system owned and operated by Intelsat." FRAA, § 146(a)(1) (Res. App. at 29a).

Circuit. "'[I]t is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss.'" *Pennsylvania ex rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984), *cert. denied*, 470 U.S. 1054 (1985)). *See also Telectronics Proprietary, Ltd. v. Medtronic, Inc.*, 687 F. Supp. 832, 836 (S.D.N.Y. 1988).

Second, implicit in petitioners' argument is the proposition that respondent has immunity when carrying out its official activities as Signatory subject to United States instructions. Petitioners cannot avoid the dispositive effect of this admission by arguing that they are only challenging respondent's official activities when it allegedly departs from instructions of the United States Government.[24] *See Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689 (1949); *Butz v. Economou*, 438 U.S. 478, 507 (1978); *Donald v. Orfila*, 618 F. Supp. 645, 648 (D.D.C. 1985) ("where the acts of the defendant were performed in his official capacity and fell within his functions as Secretary General of the OAS, the defendant is absolutely immune from suit") *aff'd*, 788 F.2d 36 (1986).

Third, petitioners' argument ignores the nature of respondent's role as the United States Signatory to INTELSAT. As the Second Circuit found, respondent, in its role as Signatory, is subject to extensive supervision and direction by both the Executive Branch and Congress.[25] (Pet. App. at A5-7.) It is through this in-

---

[24] As the Second Circuit found: "The [CSA] imposes a duty on COMSAT to 'comply . . . with all provisions of th[e] chapter,' 47 U.S.C. § 743(c), and authorizes a district court, on application of the Attorney General, to enjoin COMSAT from taking any action or adopting any practices or policies inconsistent with 'the policy and purposes declared in section 701' of the Act, *id.* § 743(a)." (Pet. App. at A3).

[25] For instance, the Second Circuit recognized that:

> Pursuant to the directive in section 721(a)(4) to oversee COMSAT's relations with foreign governments, Executive Or-

structional process that respondent, in its capacity as Signatory to INTELSAT, is subject to detailed directions from the Executive Branch "prior to or during each INTELSAT meeting." Memorandum of Understanding, signed by the Departments of State and Commerce, the FCC and COMSAT at ¶ 8 (Res. App. at 25a). Each relevant government agency reviews in advance all INTELSAT meeting agendas and must advise the Department of State "of those items on which it believes prior U.S. government instructions to [respondent] are required." *COMSAT Study* (Res. App. at 20a). The Department of State directs that respondent "shall not take action on such agenda items until" after the State Department has coordinated the views of all participating agencies and has "issue[d] instructions to Comsat as to the position it should take on the agenda items." (*Id.* at 22a). Once the Executive Branch has reached a considered policy determination, respondent, as Signatory to INTELSAT, must implement that policy and communicate the government's views to its INTELSAT counterparts.

There is, accordingly, no merit to petitioners' contention that their complaint somehow is based solely on those alleged activities by respondent as Signatory not involv-

---

der No. 12,046 specifies that '[w]ith respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies.' 43 Fed. Reg. 13,349, 13,354 (1978). In particular, the Secretary should 'instruct[] [COMSAT] in its role as the designated United States representative to [INTELSAT]' and 'direct the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962.' *Id.*; *see also Procedures for U.S. Government Instruction of the Communications Satellite Corporation in its Role as U.S. Representative to the Interim Communications Satellite Commission* [sic], 77 F.C.C.2d 564 (1980); 1984 Memorandum of Understanding among the Department of State and Commerce and the Federal Trade [sic] Commission.

(Pet. App. at A5-6).

ing governmental directives or instructions. Petitioners' contention is particularly disingenous in light of the complaint's specific allegations that respondent, *as the United States representative to INTELSAT*, has allegedly failed to implement United States policy. (Complaint ¶¶ 28(b), (c); Pet. App. at C18). Petitioners' attempt to rewrite their complaint to obtain judicial review of the Executive Branch's foreign policy decisions in the area of international satellite communications should be rejected.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Of Counsel:
WARREN Y. ZEGER
KEITH H. FAGAN
COMMUNICATIONS SATELLITE CORPORATION
950 L'Enfant Plaza, S.W.
Washington, D.C. 20024
(202) 863-6019

A. DUNCAN WHITAKER
Counsel of Record
MARK D. WEGENER
YVETTE BENGUEREL
HOWREY & SIMON
1730 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 783-0800

THOMAS J. SWEENEY, III
DAVIS MARKEL & EDWARDS
100 Park Avenue
New York, New York 10017
(212) 685-5885

Attorneys for Respondent Communications Satellite Corporation

January 22, 1992

APPENDICES

INDEX TO APPENDIX

APPENDIX A: Page

G.A. Res. 1721, 1 U.N. GAOR Supp. (No. 17), U.N. Doc. A/5100 (1962) 1a

APPENDIX B:

Executive Order No. 11,966, 3 C.F.R. 158 (1978) .. 6a

APPENDIX C:

Fxecutive Order No. 12,046, 3 C.F.R. 158 (1978) (Selected Excerpts) 8a

APPENDIX D:

Executive Order No. 11,191, 3 C.F.R. 273 (1965) .. 16a

APPENDIX E:

Procedures for U.S. Government Instruction of the Communications Satellite Corporation in its Role as U.S. Representative to the Interim Communications Satellite Committee, *reprinted in COMSAT Study*, 77 F.C.C.2d 564 (1980) 19a

APPENDIX F:

Memorandum of Understanding, signed by Departments of State and Commerce, FCC and COMSAT (Sept. 28, 1984) 23a

APPENDIX G:

Letter from Secretaries of State and Commerce to Mark S. Fowler, Chairman, Federal Communications Commission (Nov. 28, 1984) 27a

APPENDIX H:

Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, 99 Stat. 405 (1985) 29a

APPENDIX I:

In re Establishment of Satellite Systems Providing International Communications, FCC Docket No. 84-1299, Report and Order (July 25, 1985) (Selected Excerpts) 33a

APPENDIX A

1721 (XVI). International co-operation in the peaceful uses of outer space

A

The General Assembly,

Recognizing the common interest of mankind in furthering the peaceful uses of outer space and the urgent need to strengthen international co-operation in this important field,

Believing that the exploration and use of outer space should be only for the betterment of mankind and to the benefit of States irrespective of the stage of their economic or scientific development,

1. *Commends* to States for their guidance in the exploration and use of outer space the following principles:

(*a*) International law, including the Charter of the United Nations, applies to outer space and celestial bodies;

(*b*) Outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation;

2. *Invites* the Committee on the Peaceful Uses of Outer Space to study and report on the legal problems which may arise from the exploration and use of outer space.

1085th plenary meeting,
20 December 1961.

B

The General Assembly,

Believing that the United Nations should provide a focal point for international co-operation in the peaceful exploration and use of outer space,

1. *Calls upon* States launching objects into orbit or beyond to furnish information promptly to the Committee on the Peaceful Uses of Outer Space, through the Secretary-General, for the registration of launchings;

2. *Requests* the Secretary-General to maintain a public registry of the information furnished in accordance with paragraph 1 above;

3. *Requests* the Committee on the Peaceful Uses of Outer Space, in co-operation with the Secretary-General and making full use of the functions and resources of the Secretariat:

(*a*) To maintain close contact with governmental and non-governmental organizations concerned with outer space matters;

(*b*) To provide for the exchange of such information relating to outer space activities as Governments may supply on a voluntary basis, supplementing but not duplicating existing technical and scientific exchanges;

(*c*) To assist in the study of measures for the promotion of international co-operation in outer space activities;

4. *Further requests* the Committee on the Peaceful Uses of Outer Space to report to the General Assembly on the arrangements undertaken for the performance of those functions and on such developments relating to the peaceful uses of outer space as it considers significant.

1085th plenary meeting,
20 December 1961.

3a

C

The General Assembly,

Noting with gratification the marked progress for meteorological science and technology opened up by the advances in outer space,

Convinced of the world-wide benefits to be derived from international co-operation in weather research and analysis,

1. *Recommends* to all Member States and to the World Meteorological Organization and other appropriate specialized agencies the early and comprehensive study, in the light of developments in outer space, of measures:

(*a*) To advance the state of atmospheric science and technology so as to provide greater knowledge of basic physical forces affecting climate and the possibility of large-scale weather modification;

(*b*) To develop existing weather forecasting capabilities and to help Member States make effective use of such capabilities through regional meteorological centres;

2. *Requests* the World Meteorological Organization, consulting as appropriate with the United Nations Educational, Scientific and Cultural Organization and other specialized agencies and governmental and non-governmental organizations, such as the International Council of Scientific Unions, to submit a report to the Governments of its Member States and to the Economic and Social Council at its thirty-fourth session regarding appropriate organizational and financial arrangements to achieve those ends, with a view to their further consideration by the General Assembly at its seventeenth session;

3. *Requests* the Committee on the Peaceful uses of Outer Space, as it deems appropriate, to review that report and submit its comments and recommendations to the Economic and Social Council and to the General Assembly.

1085th plenary meeting,
20 December 1961.

D

The General Assembly,

Believing that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis,

Convinced of the need to prepare the way for the establishment of effective operational satellite communication,

1. *Notes with satisfaction* that the International Telecommunication Union plans to call a special conference in 1963 to make allocations of radio frequency bands for outer space activities;

2. *Recommends* that the International Telecommunication Union consider at that conference those aspects of space communication in which international co-operation will be required;

3. *Notes* the potential importance of communication satellites for use by the United Nations and its principal organs and specialized agencies for both operational and informational requirements;

4. *Invites* the Special Fund and the Expanded Programme of Technical Assistance, in consultation with the International Telecommunication Union, to give sympathetic consideration to requests from Member States for technical and other assistance for the survey of their communication needs and for the development of their domestic communication facilities, so that they may make effective use of space communication;

5. *Requests* the International Telecommunication Union, consulting as appropriate with Member States, the United Nations Educational, Scientific and Cultural Organization and other specialized agencies and governmental and non-governmental organizations, such as the Committee on Space Research of the International Council of Scientific Unions, to submit a report on the imple-

mentation of these proposals to the Economic and Social Council at its thirty-fourth session and to the General Assembly at its seventeenth session;

6. *Requests* the Committee on the Peaceful Uses of Outer Space, as it deems appropriate, to review that report and submit its comments and recommendations to the Economic and Social Council and to the General Assembly.

1085th plenary meeting,
20 December 1961.

E

The General Assembly,

Recalling its resolution 1472 (XIV) of 12 December 1959,

Noting that the terms of office of the members of the Committee on the Peaceful Uses of Outer Space expire at the end of 1961,

Noting the report of the Committee on the Peaceful Uses of Outer Space,[1]

1. *Decides* to continue the membership of the Committee on the Peaceful Uses of Outer Space as set forth in General Assembly resolution 1472 (XIV) and to add Chad, Mongolia, Morocco and Sierra Leone to its membership in recognition of the increased membership of the United Nations since the Committee was established;

2. *Requests* the Committee on the Peaceful Uses of Outer Space to meet not later than 31 March 1962 to carry out its mandate as contained in General Assembly resolution 1472 (XIV), to review the activities provided for in resolutions A, B, C and D above and to make such reports as it may consider appropriate.

1085th plenary meeting,
20 December 1961.

---

[1] *Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 21, document A/4987.

APPENDIX B

Executive Order 11966 January 19, 1977

Designating Certain Public International Organizations Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), and as President of the United States of America, having found that the United States participates in the following organizations, it is hereby ordered as follows:

SECTION 1. The International Development Association, in which the United States participates pursuant to the Act of Congress approved June 30, 1960 (74 Stat. 293, 22 U.S.C. 284) and the Articles of Agreement of the International Development Association (11 U.S.T. 2284, T.I.A.S. 4607), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, provided that, this designation shall not affect in any way the applicability of Section 3, Article VIII, of the Articles of Agreement of the International Development Association.

SEC. 2. The International Centre for Settlement of Investment Disputes, in which the United States participates pursuant to the Act of Congress approved August 11, 1966 (80 Stat. 344, 22 U.S.C. 1650) and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (17 U.S.T. 1270, T.I.A.S. 6090), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

SEC. 3. The International Telecommunications Satellite Organization (INTELSAT), in which the United States participates pursuant to the authority of the Communications Satellite Act of 1962 (76 Stat. 419, 47 U.S.C. 701-744) and in accord with the Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT) and the Operating Agreement signed pursuant thereto (TIAS 7532), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

SEC. 4. Executive Order No. 11718 of May 14, 1973, is revoked.

SEC. 5. This Order shall be effective as of November 24, 1976.

GERALD R. FORD

THE WHITE HOUSE,
January 19, 1977.

APPENDIX C

[Selected Excerpts]

Executive Order 12046 March 27, 1978

Relating to the Transfer of Telecommunications Functions

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)), the authority and control vested in the President by Section 2 of Executive Order No. 11556, as amended, Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the transfer of certain telecommunications functions, it is hereby ordered as follows:

* * * *

SECTION 2

FUNCTIONS TRANSFERRED TO COMMERCE

2-1. *Radio Frequencies.*

2-101. The authority of the President to assign frequencies to radio stations or to classes of radio stations belonging to and operated by the United States, including the authority to amend, modify, or revoke such assignments, was transferred to the Secretary of Commerce.

2-102. This authority, which was originally vested in the President by Section 305(a) of the Communications Act of 1934, as amended (47 U.S.C. 305(a)), was transferred and assigned to the Director of the Office of Telecommunications Policy by Section 1 of Reorganization Plan No. 1 of 1970 and Section 3 of Executive Order No. 11556.

2-103. The authority to assign frequencies to radio stations is subject to the authority to dispose of appeals from frequency assignments as set forth in Section 3-2 of this Order.

2-2. *Construction of Radio Stations.*

2-201. The authority to authorize a foreign government to construct and operate a radio station at the seat of government of the United States was transferred to the Secretary of Commerce. Authorization for the construction and operation of a radio station pursuant to this authority and the assignment of a frequency for its use can be made only upon recommendation of the Secretary of State and after consultation with the Attorney General and the Chairman of the Federal Communications Commission.

2-202. This authority, which was originally vested in the President by Section 305(d) of the Communications Act of 1934, as amended (47 U.S.C. 305), was delegated to the Director of the Office of Telecommunications Policy by Section 5 of Executive Order No. 11556.

2-3. *Communications Satellite System.*

2-301. Certain functions relating to the communications satellite system were transferred to the Secretary of Commerce. Those functions were delegated or assigned to the Director of the Office of Telecommunications Policy by Executive Order No. 11191, as amended by Executive Order 11556. The functions include authority vested in the President by Section 201(a) of the Communications Satellite Act of 1962 (76 Stat. 421, 47 U.S.C. 721(a)). These functions are specifically set forth in the following provisions of this Section.

(a) Aid in the planning and development of the commercial communications satellite system and aid in the execution of a national program for the operation of such a system.

(b) Conduct a continuous review of all phases of the development and operation of such system, including the activities of the Corporation.

(c) Coordinate, in consultation with the Secretary of State, the activities of governmental agencies with responsibilities in the field of telecommunications, so as to insure that there is full and effective compliance at all times with the policies set forth in the Act.

(d) Make recommendations to the President and others as appropriate, with respect to all steps necessary to insure the availability and appropriate utilization of the communications satellite system for general government purposes in consonance with Section 201(a)(6) of the Act.

(e) Help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad.

(f) Assist in the preparation of Presidential action documents for consideration by the President as may be appropriate under Section 201(a) of the Act, make necessary recommendations to the President in connection therewith, and keep the President currently informed with respect to the carrying out of the Act.

(g) Serve as the chief point of liaison between the President and the Corporation.

(h) The Secretary of Commerce shall timely submit to the President each year the report (including evaluations and recommendations) provided for in Section 404(a) of the Act (47 U.S.C. 744(a)).

(i) The Secretary of Commerce shall coordinate the performance of these functions with the Secretary of State. The Corporation and other concerned Executive agencies shall provide the Secretary of Commerce with

such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

2-4. *Other Telecommunications Functions.*

Certain functions assigned, subject to the authority and control of the President to the Director of the Office of Telecommunications Policy by Section 2 of Executive Order No. 11556 were transferred to the Secretary of Commerce. These functions, subject to the authority and control of the President, are set forth in the following subsections.

2-401. The Secretary of Commerce shall serve as the President's principal adviser on telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-402. The Secretary of Commerce shall advise the Director of the Office of Management and Budget on the development of policies relating to the procurement and management of Federal telecommunications systems.

2-403. The Secretary of Commerce shall conduct studies and evaluations concerning telecommunications research and development, and concerning the initiation, improvement, expansion, testing, operation, and use of Federal telecommunications systems. The Secretary shall advise appropriate agencies, including the Office of Management and Budget, of the recommendations which result from such studies and evaluations.

2-404. The Secretary of Commerce shall develop and set forth, in coordination with the Secretary of State and other interested agencies, plans, policies, and programs which relate to international telecommunications issues, conferences, and negotiations. The Secretary of Commerce shall coordinate economic, technical, operational and related preparations for United States participation in international telecommunications confer-

ences and negotiations. The Secretary shall provide advice and assistance to the Secretary of State on international telecommunications policies to strengthen the position and serve the best interests of the United States, in support of the Secretary of State's responsibility for the conduct of foreign affairs.

2-405. The Secretary of Commerce shall provide for the coordination of the telecommunications activities of the Executive Branch, and shall assist in the formulation of policies and standards for those activities, including but not limited to considerations of interoperability, privacy, security, spectrum use and emergency readiness.

2-406. The Secretary of Commerce shall develop and set forth telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry.

2-407. The Secretary of Commerce shall ensure that the Executive Branch views on telecommunications matters are effectively presented to the Federal Communications Commission and, in coordination with the Director of the Office of Management and Budget, to the Congress.

2-408. The Secretary of Commerce shall establish policies concerning spectrum assignments and use by radio stations belonging to and operated by the United States. Agencies shall consult with the Secretary of Commerce to ensure that their conduct of telecommunications activities is consistent with those policies.

2-409. The Secretary of Commerce shall develop, in cooperation with the Federal Communications Commission, a comprehensive long-range plan for improved management of all electromagnetic spectrum resources.

2-410. The Secretary of Commerce shall conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology.

2-411. The Secretary of Commerce shall coordinate Federal telecommunications assistance to State and local governments.

2-412. The Secretary of Commerce shall conduct and coordinate economic and technical analyses of telecommunications policies, activities, and opportunities in support of assigned responsibilities.

2-413. The Secretary of Commerce shall contract for studies and reports related to any aspect of assigned responsibilities.

2-414. The Secretary of Commerce shall participate with the National Security Council and the Director of the Office of Science and Technology Policy in carrying out their functions under Sections 4-1, 4-2, and 4-3 of this Order, and may perform specific staff services for them as requested.

2-5. *Consultation Responsibilities.*

2-501. The authority to establish coordinating committees, as assigned to the Director of the Office of Telecommunications Policy by Section 10 of Executive Order No. 11556, was transferred to the Secretary of Commerce.

2-502. As permitted by law, the Secretary of Commerce shall establish such interagency committees and working groups composed of representatives of interested agencies, and shall consult with such departments and agencies as may be necessary for the most effective performance of his functions. To the extent he deems it necessary to continue the Interdepartment Radio Advisory Committee, that Committee shall serve in an advisory capacity to the Secretary. As permitted by law, the Secretary also shall establish one or more telecommunications advisory committees composed of experts in the telecommunications area outside the Government.

* * * *

SECTION 5

Related Telecommunications Functions

5-1. *The Department of Commerce.*

5-101. The Secretary of Commerce shall continue to perform the following functions previously assigned by Section 13 of Executive Order No. 11556:

(a) Perform analysis, engineering, and administrative functions, including the maintenance of necessary files and data bases, as necessary in the performance of assigned responsibilities for the management of electromagnetic spectrum.

(b) Conduct research and analysis of electromagnetic propagation, radio systems characteristics, and operating techniques affecting the utilization of the electromagnetic spectrum in coordination with specialized, related research and analysis performed by other Federal agencies in their areas of responsibility.

(c) Conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies.

5-102. The Secretary of Commerce shall participate, as appropriate, in evaluating the capability of telecommunications resources, in recommending remedial actions, and in developing policy options.

5-2. *Department of State.*

5-201. With respect to telecommunications, the Secretary of State shall exercise primary authority for the conduct of foreign policy, including the determination of United States positions and the conduct of United States participation in negotiations with foreign governments and international bodies. In exercising this responsibility the Secretary of State shall coordinate with other agencies as appropriate, and, in particular, shall give full consideration to the Federal Communications Com-

mission's regulatory and policy responsibility in this area.

5-202. The Secretary of State shall continue to perform the following functions previously assigned by Executive Order No. 11191, as amended:

(a) Exercise the supervision provided for in Section 201(a)(4) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 721(a)(4)); be responsible, although the Secretary of Commerce is the chief point of liaison, for instructing the Communications Satellite Corporation in its role as the designated United States representative to the International Telecommunications Satellite Organization; and direct the foreign relations of the United States with respect to actions under the Communications Satellite Act of 1962, as amended.

(b) Coordinate, in accordance with the applicable interagency agreements, the performance of these functions with the Secretary of Commerce, the Federal Communications Commission, other concerned Executive agencies, and the Communications Satellite Corporation (see 47 U.S.C. 731-735). The Corporation and other concerned Executive agencies shall provide the Secretary of State with such assistance, documents, and other cooperation as will enable the Secretary to carry out these functions.

5-3. *General Services Administration.* The Administrator of General Services shall coordinate with the Secretary of Commerce, the Director of the Office of Science and Technology Policy, and the National Security Council the development of policies, plans, programs, and standards for the emergency use of telecommunications.

* * * *

6-304. This Order shall be effective March 26, 1978.

JIMMY CARTER

THE WHITE HOUSE,
March 27, 1978.

APPENDIX D

Executive Order 11191

PROVIDING FOR THE CARRYING OUT OF CERTAIN PROVISIONS OF THE COMMUNICATIONS SATELLITE ACT OF 1962

By virtue of the authority vested in me by Section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. Definitions. As used in this order:

(a) The term "the Act" means the Communications Satellite Act of 1962 (76 Stat. 419), and includes, except as may for any reason be inappropriate, that Act as amended from time to time.

(b) The term "the Corporation" means the Communications Satellite Corporation (incorporated on February 1, 1963, under title III of the Act and under the District of Columbia Business Corporation Act).

(c) The term "the Director" means the Director of Telecommunications Management provided for in Executive Order No. 10995 of February 16, 1962.

(d) The term "the Secretary" means the Secretary of State or his designees.

SEC. 2. *Director of Telecommunications Management.* (a) Subject to the provisions of this order, the Director shall generally advise and assist the President in connection with the functions conferred upon the President by the provisions of Section 201(a) of the Act.

(b) The Director shall:

(1) Aid in the planning and development, and aid in fostering the execution, of a national program for the establishment and operation, as expeditiously as possible, of a commercial communications satellite system.

(2) Conduct a continuous review of all phases of the development and operation of such a system, including the activities of the Corporation.

(3) Coordinate the activities of governmental agencies with responsibilities in the field of telecommunication, so as to insure that there is full and effective compliance at all times with the policies set forth in the Act.

(4) Make recommendations to the President and others as appropriate, with respect to all steps necessary to insure the availability and appropriate utilization of the communications satellite system for general Government purposes in consonance with Section 201(a)(6) of the Act.

(5) Help attain coordinated and efficient use of the electromagnetic spectrum and the technical compatibility of the communications satellite system with existing communications facilities both in the United States and abroad.

(6) Prepare, for consideration by the President, such Presidential action documents as may be appropriate under Section 201(a) of the Act, make necessary recommendations to the President in connection therewith, and keep the President currently informed with respect to the carrying out of the Act.

(7) Serve as the chief point of liaison between the President and the Corporation.

SEC. 3. *Secretary of State.* (a) The Secretary shall exercise the supervision provided for in Section 201(a)(4) of the Act and, in consonance with Section 201(a)(5) of the Act, shall further timely arrangements for foreign participation in the establishment and use of a communications satellite system.

(b) The Secretary shall have direction of the foreign relations of the United States with respect to the Act, including all negotiations by the United States with foreign

governments or with international bodies in connection with the Act.

SEC. 4. *Annual reports.* The Director shall timely submit to the President each year the report (including evaluations and recommendations) provided for in Section 404(a) of the Act.

SEC 5. *Assistance and Cooperation.* The Director and the Secretary shall effect such mutual coordination, and all other federal agencies concerned, and the Corporation, shall furnish the Director and the Secretary such assistance and documents, and shall otherwise extend to them such cooperation, as will enable the Director and the Secretary properly to carry out their responsibilities under this order and best promote the implementation of the Act in an orderly and expeditious manner. In connection with his responsibilities under section 3 of this order, the Secretary shall consult with the Director and other federal officers concerned, and, as may be appropriate, with the Corporation.

SEC. 6. *Functions reserved.* The functions, or parts of functions, conferred upon the President by the Act that are not assigned herein are reserved to the President.

LYNDON B. JOHNSON

THE WHITE HOUSE,
January 4, 1965.

APPENDIX E

Procedures for U.S. Government Instruction of the Communications Satellite Corporation in its Role as U.S. Representative to the Interim Communications Satellite Committee

Introduction

The world system for communication by satellite is organized in a unique manner. The space segment of this system is owned and controlled by a consortium of more than 50 countries whose governing Board is the Interim Communications Satellite Committee (ICSC). The Communications Satellite Corporation (Comsat) is the owner of the largest share of the consortium, is the U.S. representative to the ICSC, and in turn acts as manager in the development and operation of the space segment. It is also, of course, a domestic U.S. corporation with certain functions having little or nothing to do with the work of the ICSC.

This document deals only with the problem of the supervision of the U.S. Government over Comsat in its role as U.S. representative to the ICSC, and as a member of the international consortium. In these roles, Comsat exercises, of course, among other things, an important foreign policy function on behalf of the U.S. Government. In some respects its role is similar to the role of other U.S. delegates to international bodies. Specific statutory responsibility for the supervision of Comsat in this role is provided in the Communications Satellite Act of 1962, and particularly Section 201 thereof. That Section imposes responsibilities both on the President and on the Federal Communications Commission (FCC). The President in turn has delegated some of his responsibility to the Director of Telecommunications Management and to the Secretary of State.

The supervision by the various agencies of the U.S. Government should be accomplished essentially by in-

structing Comsat on its course of action in the ICSC and consortium on those items where the U.S. has a statutory or general foreign policy interest. The manner in which these instructions are formulated and conveyed to Comsat is itself a critical policy matter.

The following procedures take into account the above considerations and provide a method by which the various agencies of the U.S. Government can, in a coordinated manner, participate in giving appropriate instructions to Comsat in its role as U.S. representative to the ICSC, consistent with the President's overall responsibility for the conduct of foreign affairs. This document is not concerned with the discharge of the statutory responsibilities of the particular government agencies involved, other than in the determination and issuance of instructions to Comsat.

(1) Comsat shall circulate copies of proposed agenda for meetings of the ICSC to the Department of State, the Director of Telecommunications Management, and the Federal Communications Commission at least four weeks before the matters on the agenda are to be considered by the ICSC. Amendments to agenda shall be circulated as soon as possible.

(2) Each of the agencies shall review the agenda promptly and advise the Department of State of those items on which it believes prior U.S. Government instructions to Comsat are required. The Department shall instruct Comsat that it shall not take action on such agenda items until it receives U.S. Government instructions. As to such items, Comsat shall furnish pertinent documentation as soon as possible.

(3) On important matters Comsat should advise the Department of State, the Director of Telecommu-

nications Management (DTM), and the FCC of the position it desires to take well before the time such matters are placed on the agenda and as soon as meaningful consideration can be given by the agencies, so as to allow inter-agency consultation in arriving at a determination of instructions to Comsat.

Comsat shall be advised that, where consideration by the FCC is required, its submission to the FCC shall be in such form, and with sufficient supporting data, so that the U.S. Government instructions may provide the flexibility required in discussions in the ICSC, without need for additional instructions on minor changes.

(4) The U.S. Government shall exercise its responsibility to instruct the U.S. representative in an expeditious and, ordinarily, non-public manner. This requirement raises particular considerations with respect to the FCC, in view of its obligations under 201(c) of the Communications Satellite Act of 1962, and its position as a regulatory agency. However, the FCC, under applicable statutory provisions, is able to operate in an expeditious and non-public manner with regard to its determinations concerning instructions to Comsat as the U.S. representative to the ICSC.

(5) Nevertheless, from time to time, the FCC, after consultation with the Department of State and the DTM, may find it appropriate and desirable to arrive at its determinations by means of a public hearing.

(6) On matters where consideration by the FCC is required, the FCC, after having followed either procedure, shall then request the Department of State to issue appropriate instructions to Comsat.

Otherwise, each agency, including the FCC, shall, as promptly as possible, advise the Department of State of its determinations with respect to items of interest to it.

(7) On receipt of the advice of the several agencies, the Department of State, in conformance with Section 201 of the Communications Satellite Act and Executive Order 11191, will issue instructions to Comsat as to the position it should take on the agenda items, taking into account the respective agency determinations.

APPENDIX F

MEMORANDUM OF UNDERSTANDING

Consistent with and in furtherance of the Communications Satellite Act of 1962, as amended, and Executive Order 12046, the Federal Communications Commission, the National Telecommunications and Information Administration of the Department of Commerce, and the Department of State (hereinafter referred to collectively as the "Government") welcome the efforts to date of the Communications Satellite Corporation (Comsat) to make INTELSAT materials and information more readily available and to increase public input into the INTELSAT decisionmaking process. The Government and Comsat now have in effect the following procedures:

1. Comsat will make available, upon request from any interested party, a detailed overview of INTELSAT's structure and activities including its procurement process, the workings of the INTELSAT decisionmaking bodies, Comsat's role and functions as U.S. Signatory, and Comsat's document distribution program.

2. Comsat will hold public meetings on a quarterly basis, scheduled to be synchronous with INTELSAT Board of Governors meetings, to provide a forum for a review and discussion with all interested parties of actions taken at the previous Board of Governors meeting, and proposals and action expected at the next such meeting. Comsat will provide the FCC with taped records of these public meetings, and the FCC will place the tapes in its public document room.

3. Comsat will continue to make available to the Government copies of all INTELSAT Board of Governors, Meeting of Signatories and Signatory documents as soon as Comsat receives them. The FCC will place in its public document room for public inspection and duplication all such INTELSAT documents as soon as they are received, unless Comsat requests nondisclosure of any such

document pursuant to the criteria for nondisclosure established in the FCC's Comsat Corporate Structure Order of March 30, 1984. Simultaneous with such request to the FCC for nondisclosure, Comsat will notify NTIA and the Department of State of those documents it seeks to have withheld from the public. NTIA and the Department of State will take into account such requests until notified to its contrary by the FCC or Comsat, as each Government agency meets its obligations under the Freedom of Information Act, but will consider all other such documents as public information.

4. Comsat will designate a point of contact for public inquiries and will notify the Government of that person's name, title, address, and phone number, and upon request will provide such information to any interested party.

5. Comsat will continue to invite all U.S. internatinal service carriers to the annual INTELSAT Global Traffic Meeting. Such carriers will continue to receive copies of the Traffic Data Base, which represents the results of those meetings.

6. Comsat will continue to provide international carriers with the plans which INTELSAT proposes for consideration by the annual regional meetings of Operations Representatives and will continue to hold briefings with carriers before and after these meetings to discuss both the proposed and agreed plans.

7. The FCC will issue a public notice thirty days prior to each INTELSAT meeting inviting written comments from interested parties on any matters on the agenda of the next INTELSAT meeting. The Government will take such comments into consideration in formulating its instructions to Comsat, but will not be bound by such public comments.

8. The procedures established by this memorandum are intended to complement, not supplant, the processes

by which Comsat briefs the Government before and after INTELSAT meetings. The Department of State will continue to issue instructions prior to or during each INTELSAT meeting and Comsat agrees to be bound by such instructions.

9. The parties to this memorandum agree that future developments may require a reevaluation of the effectiveness of this initiative and the adoption of new or additional procedures, to ensure that the objectives set forth herein continue to be met. Such future developments may include a determination that the procedures established herein do not adequately respond to the needs of U.S. participants in a growing and more competitive international telecommunications environment. Under such circumstances, the Government and Comsat agree to initiate discussions as soon as such factors are known and to work towards improving, revising or refining the procedures adopted in this memorandum. In any event, such discussion will be held soon after the sixth month anniversary of the signing of this memorandum.

Agreed to by the undersigned on the 28th day of September 1984, in Washington, D.C.

/s/ David J. Markey
DAVID J. MARKEY
Assistant Secretary for
Communications and
Information
National Telecommunications
and Information
Administration
U.S. Department of Commerce

/s/ Mark S. Fowler
MARK S. FOWLER
Chairman
Federal Communications
Commission

/s/ William Schneider, Jr.
WILLIAM SCHNEIDER, JR.
Under Secretary for Security
Assistance, Science and
Technology
U.S. Department of State

/s/ Irving Goldstein
IRVING GOLDSTEIN
President
Communications Satellite
Corporation

APPENDIX G

[SEAL]

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

November 28, 1984

Honorable Mark S. Fowler
Chairman
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Chairman:

The President has determined that separate international communications satellite systems are required in the national interest. He has also directed that we inform the Federal Communications Commission of criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests. Prior to final authorization by the Commission of any systems, to assure that the United States meets its obligations as a Party to the Agreement Establishing the International Telecommunications Satellite Organization (INTELSAT) (TIAS 7532):

(1) each system is to be restricted to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service); and,

(2) one or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party under Article XIV(d) of the INTELSAT Agreement to ensure

technical compatibility and to avoid significant economic harm.

The President's determination, its conditions, and these criteria are premised on our review of the issues prompted by the applications now before the Commission. If proposals substantially different are forthcoming, further Executive Branch review may be required.

The Commission should afford interested parties an opportunity to submit timely comments on the pending applications in view of these Executive Branch recommendations.

A memorandum of law concerning Article XIV of the INTELSAT Agreement is enclosed.

Sincerely,

/s/ George P. Shultz
Secretary of State

/s/ Malcolm Baldrige
Secretary of Commerce

Enclosure

APPENDIX H

PUBLIC LAW 99-93 [H.R. 2068]; August 16, 1985

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEARS 1986 AND 1987

An Act to authorize appropriations for fiscal years 1986 and 1987 for the Department of State, the United States Information Agency, the Board for International Broadcasting, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Foreign Relations Authorization Act, Fiscal Years 1986 and 1987".

* * * *

SEC. 146. INTELSAT.

(a) POLICY.—The Congress declares that it is the policy of the United States—

(1) as a party to the International Telecommunications Satellite Organization (hereinafter in this section referred to as "Intelsat"), to foster and support the global commercial communications satellite system owned and operated by Intelsat;

(2) to make available to consumers a variety of communications satellite services utilizing the space segment facilities of Intelsat and any additional such facilities which are found to be in the national interest and which—

(A) are technically compatible with the use of the radio frequency spectrum and orbital

space by the existing or planned Intelsat space segment, and

(B) avoid significant economic harm to the global system of Intelsat; and

(3) to authorize use and operation of any additional space segment facilities only if the obligations of the United States under article XIV(d) of the Intelsat Agreement have been met.

(b) PRECONDITIONS FOR INTELSAT CONSULTATION.—Before consulting with Intelsat for purposes of coordination of any separate international telecommunications satellite system under article XIV(d) of the Intelsat Agreement, the Secretary of State shall—

(1) in coordination with the Secretary of Commerce, ensure that any proposed separate international satellite telecommunications system comply with the Executive Branch conditions established pursuant to the Presidential Determination No. 85-2; and

(2) ensure that one or more foreign authorities have authorized the use of such system consistent with such conditions.

(c) AMENDMENT OF INTELSAT AGREEMENT.—(1) The Secretary of State shall consult with the United States signatory to Intelsat and the Secretary of Commerce regarding the appropriate scope and character of a modification to article V(d) of the Intelsat Agreement which would permit Intelsat to establish cost-based rates for individual traffic routes, as exceptional circumstances warrant, paying particular attention to the need for avoiding significant economic harm to the global system of Intelsat as well as United States national and foreign policy interests.

(2)(A) To ensure that rates established by Intelsat for such routes are cost-based, the Secretary of State, in

consultation with the Secretary of Commerce and the Chairman of the Federal Communications Commission, shall instruct the United States signatory to Intelsat to ensure that sufficient documentation, including documentation regarding revenues and costs, is provided by Intelsat so as to verify that such rates are in fact cost-based.

(B) To the maximum extent possible, such documentation will be made available to interested parties on a timely basis.

(3) Pursuant to the consultation under paragraph (1) and taking the steps prescribed in paragraph (2) to provide documentation, the United States shall support an appropriate modification to article V(d) of the Intelsat Agreement to accomplish the purpose described in paragraph (1).

(d) CONGRESSIONAL CONSULTATION.—In the event that, after United States consultation with Intelsat for the purposes of coordination under article XIV(d) of the Intelsat Agreement for the establishment of a separate international telecommunications satellite system, the Assembly of Parties of Intelsat fails to recommend such a separate system, and the President determines to pursue the establishment of a separate system notwithstanding the Assembly's failure to approve such system, the Secretary of State, after consultation with the Secretary of Commerce, shall submit to the Congress a detailed report which shall set forth—

(1) the foreign policy reasons for the President's determination, and

(2) a plan for minimizing any negative effects of the President's action on Intelsat and on United States foreign policy interests.

(e) NOTIFICATION TO FEDERAL COMMUNICATIONS COMMISSION.—In the event the Secretary of State submits a report under subsection (d), the Secretary, 60 calendar

days after the receipt by the Congress of such report, shall notify the Federal Communications Commission as to whether the United States obligations under article XIV (d) of the Intelstate Agreement have been met.

(f) IMPLEMENTATION.—In implementing the provisions of this section, the Secretary of State shall act in accordance with Executive order 12046.

(g) DEFINITION.—For the purposes of this section, the term "separate international telecommunications satellite system" or "separate system" means a system of one or more telecommunications satellites separate from the Intelsat space segment which is established to provide international telecommunications services between points within the United States and points outside the United States, except that such term shall not include any satellite or system of satellites established—

(1) primarily for domestic telecommunications purposes and which incidentally provides services on an ancillary basis to points outside the jurisdiction of the United States but within the western hemisphere, or

(2) solely for unique governmental purposes.

* * * *

APPENDIX I

[Selected Excerpts]

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

CC Docket No. 84-1299

IN THE MATTER OF
ESTABLISHMENT OF SATELLITE SYSTEMS
PROVIDING INTERNATIONAL COMMUNICATIONS

REPORT AND ORDER

Adopted July 25, 1985 Released September 3, 1985

By the Commission:

Commissioner Rivera issuing a separate statement; Commissioner Quello concurring and issuing a separate statement.

TABLE OF CONTENTS

I. Table of Contents	Paragraphs
II. Introduction	1-3
III. Summary	4-5
IV. Background	6-19
A. The Applications	6-11
B. The Presidential Determination and Executive Branch White Paper	12-21

TABLE OF CONTENTS—Continued

	Page
V. Comments	22-34
A. Formal Comments	23-31
B. Informal Comments	32-34
VI. Discussion	35-274
A. General Policy Considerations	
1. Current U.S. Policy	40-42
2. General Benefits of Competition	43-48
3. Review of Specific Proposals	49-65
(a) Findings by the Senior Interagency Group	50-51
(b) Comments by Service Providers and End-Users	52-55
(c) Benefits that the Applicants Believe Will Result from Their Proposals	56-63
(d) Challenges to Claimed Benefits of Separate Systems	64-67
4. Conclusions as to Public Benefits	68-86
B. Economic Impact on INTELSAT	
1. U.S. Obligations Under Article XIV(d) of the INTELSAT Agreement	87-90
2. Executive Branch Restrictions	91-138
(a) Comments on the Restriction	93-104
(b) Need for Restriction	105-107
(c) Scope and Applicability of Restrictions	108-127
(d) Operating Agreements	128-130

TABLE OF CONTENTS—Continued

	Page
(e) Enforceability of Executive Branch Restrictions	131-138
3. Consideration of Significant Economic Harm	139-194
(a) Introduction	139-143
(b) Comments	144-150
(c) Review of the Hinchman Report	151-158
(d) General Conception of Economic Harm	159-169
(e) Significant Economic Harm in This Proceeding	170-194
C. Other Considerations	
1. Pricing Flexibility	195-199
2. Effect on Developing Countries	200-202
3. Effect on U.S. Satellite Equipment Manufacturers	203-216
4. Excessive Capacity	217-218
5. Foreign Policy Considerations	219-220
6. Direct Access	221
7. Spectrum/Orbit Efficiency	222-230
D. Licensing Policies	231
1. Legal Qualifications	232
2. Financial Qualifications	233-236
3. Technical Standards	237-264
(a) Comments	238-243
(b) Orbital Spacing	244-247
(c) Full Frequency Reuse	248-255

TABLE OF CONTENTS—Continued

	Page
(d) Application of Standards to Low Capacity Beams	256-257
(e) Conclusion	258
4. Orbit Assignment Policies	259-264
E. Summary of Conclusion	265-274

II. *Introduction*

1. On January 4, 1985, we initiated an inquiry and rulemaking about the construction and operation of satellite systems providing international communications systems.[1] The purpose of this proceeding was to solicit data and analyses about issues that have arisen in connection with the filing of a series of applications for authority to establish international communications satellite systems separate from INTELSAT and to obtain comments on the recent Executive branch decision that such systems are "required in the national interest" subject to certain limitations.

2. Applications were filed by the Orion Satellite Corporation ("Orion"), File No. CSS-83-002-P, on March 11, 1983; by International Satellite, Inc. ("ISI"), File nos. CSS-83-004-P(LA), I-P-C-83-073, on August 12, 1983; by RCA American Communications, Inc. ("RCA"), File No. I-T-C-84-085, on February 13, 1984; by Cygnus Satellite Corporation ("Cygnus"), File No. CSS-84-002-P(LA), on March 7, 1984; and by Pan American Satellite Corporation ("PanAmSat"), File No. CSS-84-004-P(LA), on May 31, 1984.[2] After the initiation of this proceeding,

---

[1] 50 Fed. Reg. 1570 (1985). Comments were originally due on February 14, 1985. By *Order*, 50 Fed. Reg. 4711 (1985), the Chief Common Carrier Bureau, extended the deadline for comments to April 1, 1985 and reply comments to June 5, 1985.

[2] Systematics General Corporation filed two applications to construct, launch, and operate satellite systems providing international

Financial Satellite Corporation ("FINANSAT"), File No. CSS-85-004-P(LA), filed an application on May 17, 1985.

3. In our Notice of Inquiry and Proposed Rulemaking, we asked for comments on the potential public benefits of authorizing separate systems, and on the economic impact separate systems would have on INTELSAT and their effect on consumers, service providers and equipment manufacturers. In addition, we requested comments on legal, technical and other policy issues and on those U.S. international obligations that must be taken into account in considering the applications before us. Finally, we requested comments on the scope and applicability of the Executive branch service restrictions intended to avoid significant economic harm to INTELSAT.

III. *Summary*

4. In this proceeding, we establish regulatory policies to consider applications for satellite systems providing international communications services separate from INTELSAT. We find here that the authorization of these separate satellite systems according to the Executive branch restrictions will be in the public interest. In arriving at this determination, we consider, first, the potential

---

services (File Nos. CSS-84-005-P(LA), CSS-84-006-P(LA)) on June 12, 1984. On July 27, 1984, Systematics filed a motion to withdraw both applications. Under delegated authority, the Commission dismissed the applications without prejudice by letter dated August 6, 1984 pursuant to § 1.748(a) of the Commission's Rules and Regulations, 47 C.F.R. § 1.748(a) (1984). In addition, Western Union Telegraph Co. requested, and was granted, a waiver to spend additional money to modify its previously authorized WESTAR VI-S domestic satellite (File No. 1144-DSS-P/LA-84) to allow six transponders to provide coverage of Central and South America. Letter from Chief, Domestic Facilities Division, Common Carrier Bureau, to Robert N. Green, Associate Counsel, Western Union Telegraph Company (July 20, 1984). It has an application on file, File Nos. 1144-DSS-P/LA-84; I-T-C-85-039, which is currently being considered by the Commission.

public benefits alternative satellites may introduce in the international marketplace. In that section, we look at the current structure of both the domestic and international satellite markets and determine whether the competitive benefits claimed in the proposals for these systems would be a likely result of their entry. Next, we consider the scope, applicability, and enforceability of the Executive Branch restrictions designed to avoid causing significant economic harm to the INTELSAT system. In that area, we address the definition of public-switched network and whether the sale or long term lease restriction will effect the services the satellite operators will be able to offer. Third, we look at the concept of significant economic harm in Article XIV(d) of the INTELSAT Agreement and the potential impact of the entry of separate satellite systems into a limited segment of the segment of the international communications market on INTELSAT. Fourth, we consider a number of related issues which were raised in the record and could effect the authorization of these systems. Finally, we consider the necessary legal, technical, and financial qualifications to be a satellite systems operator.

5. We find that the separate satellite systems will provide substantial benefits to the users of international communications services without causing significant economic harm to INTELSAT. We also find it necessary to impose the Executive branch restrictions on the authorization of these systems in order to meet our international obligations under the INTELSAT Agreement. As to the scope and applicability of the Executive Branch restrictions, we find that: 1) no communications provided over the separate systems may interconnect with the public-switched network either directly or indirectly; 2) there will be no minimum unit of capacity; 3) there will be a one-year minimum lease period; 4) separate systems operators are not to operate as common carriers; 5) the "no-interconnect" restrictions and one-year long-term lease requirement will apply to all levels of users of separate sys-

tem facilities; 6) common carriers and enhanced service providers may resell separate satellite capacity consistent with the restrictions; and 7) the use of separate systems by United States carriers would require authorization under Section 214 of the Communications Act of 1934. We also find that because of inherent detectability and disincentives and our commitment to take forceful remedial action, the restrictions would be enforceable. In addition, we conclude that the entry of these systems in a limited area of the international market will not cause significant economic harm to INTELSAT. INTELSAT will remain the exclusive provider of satellite facilities for public-switched message services and already has a start in providing the services which the separate satellite systems would compete. INTELSAT may lose a small part of its business in this market to new entrants, but we conclude that growing demand for satellite services will more than compensate for a smaller market share. We also conclude that none of the related issues raised will preclude or delay the authorization of these systems. Finally, in this order, we set out the specific details of the legal, financial, and technical qualifications necessary to obtain authority to construct and operate separate satellite systems.

* * * *

(E) *Summary of Conclusions*

265. In this proceeding, we have considered a variety of issues that have been raised by the applications that have been filed with the Commission to construct and operate international communications satellite systems separate from INTELSAT. We have concluded that the proposed separate systems will offer substantial benefits to international communications users. Separate systems will provide users with special communicaitons needs with currently unavailable means of packaging and transmitting information over satellite networks. Separate Sys-

tems will also stimulate technological innovation and service development, improve network efficiencies, reduce user costs, create new business and trade opportunities through improved international communications. Further, we have concluded that authorization of the proposed separate systems subject to the Executive branch service restrictions will provide reasonable assurance that INTELSAT will not incur significant economic harm. These service restrictions will protect INTELSAT's revenues obtained from supplying space segment capacity for international switched message services by prohibiting separate systems from interconnecting with public-switched networks. Public-switched services by far comprise INTELSAT's largest source of revenues. Only peripheral or "customized" services would be subject to competition between INTELSAT and separate systems. We believe that entry will stimulate the overall international satellite communications market beyond the levels anticipated by INTELSAT and that INTELSAT stands to benefit from such expansion. Entry of competing suppliers also will put pressures on INTELSAT to improve the efficiencies of its operations and provide services at minimum costs, consistent with reasonable service standards.

266. To implement the Executive branch service restrictions, we will condition the license for any separate system that we authorize to limit its operation to the provision of services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service). No communications provided over a separate satellite sytem's space segment may interconnect with the public facilities of common carriers to provide switched message services such as MTS, telex, TWX, telegraph, teletext facsimile and high speed switched data services. The "no-interconnection" and "sale and long-term lease" restrictions apply not only to separate system operators, but also to all levels of resellers and users of the facilities. In

view of the "sale and long-term lease" requirement, separate system licensees may not operate as common carriers. Finally, we have determined the following: (1) there is no need to establish a minimum unit of space segment capacity which a separate system must provide; (2) the minimum lease period for the "long-term lease" of capacity is to be one year; (3) space segment capacity may be obtained and resold by common carriers and enhanced service providers to provide communications services not interconnected with any public-switched message network; and (4) there is no basis to establish a "sunset" date for the Executive branch service restrictions absent a finding from the Executive branch that these restrictions are no longer necessary to fulfill U.S. international obligations.

267. In addition, consistent with the Presidential determination that separate systems are required in the national interest, we will not issue a license permitting any separate system applicant to begin operating its proposed system until the United States has completed coordination of that ssytem with INTELSAT pursuant to Article XIV (d) of the INTELSAT Agreement and we have been informed by the Department of State that the United States has fulfilled its obligations under Article XIV(d). We will review applications to determine whether the proposals: (1) are consistent with the Executive branch service restrictions and the spectrum/orbit efficiency standards that we are adopting in this decision; (2) satisfy requisite legal, financial and technical standards; and (3) otherwise are in the public interest under the Communications Act of 1934. We will issue initial construction permits to those applicants initially satisfying legal, technical and minimum financial standards. However, no applicant may begin construction until it satisfies all financial standards. Those standards must be satisfied no later than 60 days after the State Department informs the Commission that the U.S. has fulfilled its Article XIV(d) obligations. An applicant meeting all legal, technical and financial standards prior to completion of the Article XIV(d) process

may begin construction upon Commission order and at its own risk. However, no license will be issued until Article XIV(d) consultation is completed and the applicant demonstrates that it has completed construction pursuant to the terms of its construction permit.

268. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 157, 303, 308, 309, 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)(j), 157, 303, 308, 309, 403 and 404 (1984), Sections 102(d), 201(c)(3), (4), (9), and (11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701(d), 721(c)(3), (4), (9), (11) (1984), Section 553(b) of the Administrative Procedure Act, 5 U.S.C. § 553(b) (1984), and Sections 1.412 and 1.430 of the Commission's Rules and Regulations, 47 C.F.R. §§ 1.412, 1.430 (1984), that applications for international communications satellite systems separate from INTELSAT SHALL BE SUBMITTED in accordance with the standards, restrictions and requirements specified in this decision.

269. IT IS FURTHER ORDERED that this Report and Order is immediately effective on release of this document since it serves to relieve restrictions on separate satellite systems providing international communication services. To the extent this Report and Order imposes additional requirements, the applicants are granted 45 days in which to file amendments so that their applications comply with the requirements, unless a different schedule has been otherwise set out in the Report and Order. See 5 U.S.C. § 533(d) (1984); 47 C.F.R. § 1.427(b) (1984).

270. IT IS FURTHER ORDERED that Amb. Abbott Washburn's Petition for Leave to File Additional Comments is DENIED.

271. IT IS FURTHER ORDERED that International Satellite, Inc.'s Application for Review, filed on February 11, 1985, and Pan American Satellite Corporation's Motion

to Re-Establish Fair and Reasonable Procedural Dates, filed on February 4, 1985, are DENIED.

272. Pursuant to Section 605(b) of the Regulatory Flexibility Act (P.L. 96-354), IT IS CERTIFIED, that Sections 603 and 604 of the Act do not apply because this proposed rule or policy will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. §§ 603, 604, 605(b) (1984). The policies adopted in this proceeding will not have a significant economic impact on a substantial number of small businesses or other small entities because the Commission has not received, and does not anticipate receiving, a substantial number of applications from small businesses for authority to construct and operate satellite systems providing international communications services.

273. IT IS FURTHER ORDERED that CC Docket No. 84-1299 IS HEREBY TERMINATED.

274. IT IS FURTHER ORDERED that the Secretary shall cause a summary of this Report and Order to be published in the Federal Register.[172]

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO
Secretary

---

[172] We find that the summary of this Report and Order which will be published in the Federal Register will serve as effective notice to all parties under Section 553(d) of the Administrative Procedure Act, 5 U.S.C. § 553(d), and Section 1.427 of the Commission's Rules and Regulations. See 47 C.F.R. § 1.427.

(3)

No. 91-1038

Supreme Court, U.S.
FILED
FEB 6 1992
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1991

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware corporation, and REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship,

Petitioners,

v.

COMMUNICATIONS SATELLITE CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONERS

Daniel R. Shulman
GRAY, PLANT, MOOTY, MOOTY & BENNETT, P.A.
3400 City Center
33 South Sixth Street
Minneapolis, MN 55402

Joseph M. Alioto
THE LAW FIRM OF JOSEPH M. ALIOTO
600 Montgomery Street
Forty-third Floor
San Francisco, CA 94111

Attorneys for Petitioners

1992-Northwest Printing Co., 3010 2nd St. No., Minneapolis, MN 55411-588-7506

TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
ARGUMENT	2
I. THE BRIEF IN OPPOSITION SHOWS THE IMPORTANCE OF THE QUESTION PRESENTED FOR REVIEW	2
II. COMSAT REPEATEDLY MISCHARACTERIZES PAS' COMPLAINT AND COMSAT'S OWN ROLE, IN A FRUITLESS EFFORT TO PROVE THAT THE IMMUNITY GRANTED BY THE SECOND CIRCUIT IS NARROW AND CAREFULLY CRAFTED	3
CONCLUSION	7

TABLE OF AUTHORITIES

PAGE

Cases:

Conley v. Gibson, 355 U.S. 41 (1957) 6

George C. Frey Ready-Mixed Concrete, Inc. v. Pine Hill Concrete Mix Corp., 554 F.2d 551 (2d Cir. 1977) 6

Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738 (1976) 6

In the Matter of Comsat Study – Implementation of Section 505 of the International Maritime Satellite Telecommunications Act, 77 F.C.C.2d 564 (1980) 4

Nat'l Gerimedical Hosp. v. Blue Cross of Kansas City, 452 U.S. 378 (1981) 7

Constitutional Provisions, Statutes, and Rules:

Communications Satellite Act of 1962, 47 U.S.C. Sec. 701; *et seq.* (1982 and Supp. v. 1987) 5

U.S. Supreme Court Rule 15.6 1

Executive Agreements and United Nations Resolutions:

Agreement Relating to the International Telecommunications Satellite Organization "Intelsat" done Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971) 4

IN THE

Supreme Court of the United States

October Term, 1991

ALPHA LYRACOM SPACE COMMUNICATIONS, INC., a Delaware corporation, and REYNOLD V. ANSELMO, an individual, doing business as PAN AMERICAN SATELLITE, a sole proprietorship,

Petitioners,

v.

COMMUNICATIONS SATELLITE CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONERS

INTRODUCTION

Petitioners above-named ("PAS"), pursuant to United States Supreme Court Rule 15.6, hereby file this reply brief addressed to arguments first raised in the brief in opposition by the respondent, Communications Satellite Corporation ("Comsat").

ARGUMENT

I. THE BRIEF IN OPPOSITION SHOWS THE IMPORTANCE OF THE QUESTION PRESENTED FOR REVIEW

Comsat's brief in opposition itself demonstrates the importance of the question presented by the petition and the need to grant review.

First, the brief in opposition is replete with references to the importance of space satellite telecommunications, the interest of the United States in promoting and developing this field of technology, and the concern of both the Executive and Legislative Branches of the government that competition be maintained in satellites. Brief for the Respondent in Opposition ("brief in opposition"), pp. 4, 5, 6, 9, 10-12, 22-25. Repeatedly, Comsat stresses that participation in the International Telecommunications Satellite Organization ("Intelsat") is an important aspect of United States foreign policy, in which Comsat claims to exercise "an important . . . function," although, as will be shown, not nearly to the extent claimed. Brief in opposition, *e.g.*, pp. 9-10.

Second, Comsat does not disagree that the question presented has not arisen before, and may not arise again, unless this Court grants review. Brief in opposition, p. 17. Accordingly, the decision of the Second Circuit will limit Comsat's antitrust accountability for the foreseeable future in this important area of technology in the absence of intervention by this Court.

Finally, and most important, Comsat makes no secret of its view that the Second Circuit's decision provides Comsat with a license to perpetuate monopoly and foreclose competition by whatever means Comsat is able to devise and implement through its role as a participant in Intelsat. Comsat readily acknowledges that the immunity granted by the Second Circuit insulates Comsat from antitrust liability for any action taken by Comsat within the confines of Intelsat, regardless of how much damage Comsat is knowingly able to wreak on competition. Comsat unabashedly embraces the pronouncement of the Second Circuit, which frames the basic issue raised by the petition:

> Having created Comsat to wield monopoly power, along with the other participants in a global satellite system, Congress did not expect that corporation to face antitrust liability in deciding, as a member of Intelsat, whether and to what extent to permit competition.

(Appendix to Petition for Writ of Certiorari ("App.") A-12).

Thus, if this Court does not grant review, Comsat will proceed with the understanding that it may freely use its position in Intelsat to effectuate and perpetuate its monopoly as a purveyor of space satellite services outside of Intelsat. A decision authorizing a monopolist to entrench its monopoly in a vital area of new technology raises an important question that this Court ought to consider.

II. COMSAT REPEATEDLY MISCHARACTERIZES PAS' COMPLAINT AND COMSAT'S OWN ROLE, IN A FRUITLESS EFFORT TO PROVE THAT THE IMMUNITY GRANTED BY THE SECOND CIRCUIT IS NARROW AND CAREFULLY CRAFTED

Comsat's opposition to the petition of PAS rests on three fundamentally erroneous propositions. First, Comsat seeks to portray its actions as an Intelsat signatory as being largely, if not always, subject to instructions and directions from one or more branches or departments of the United States Government. Second, Comsat describes the complaint in this case as challenging the conduct of Comsat in carrying out such Governmental instructions and directions. Third, Comsat contends that the immunity granted by the Second Circuit has been carefully crafted and narrowly limited so as to protect Comsat only in carrying out its quasi-governmental functions, which are the alleged focus of attack in the complaint.

All three propositions are demonstrably false, and it is important for this Court to understand their falsity in considering this petition.

In fact, Comsat is subject to directions and instructions from the United States Government only in very limited circumstances not here relevant. Intelsat has a tripartite structure, consisting of the Assembly of Parties, the Meeting of Signatories, and the Board of Governors. *See* Agreement Relating to the International Telecommunications Satellite Organization "Intelsat" done Aug. 20, 1971, entered into force Feb. 12, 1973, 23 U.S.T. 3813, T.I.A.S. No. 7532 (1971) ("Definitive Agreement") (App. D-111, 121) Comsat does not participate in the Assembly of Parties, where the United States is represented by a principal officer of the Department of State. *In the Matter of Comsat Study – Implementation of Section 505 of the International Maritime Satellite Telecommunications Act*, 77 F.C.C.2d 564, 631, 747 (1980). As a party, the United States does not participate in the other two branches, the Meeting of Signatories and the Board of Governors, which consists of 29 signatories. *See* Definitive Agreement (App. D-111, 126, 130).

Although Comsat participates in the Meeting of Signatories, it does so almost entirely free of instructions from the United States Government, which has instructed Comsat no more than once or twice on matters before the Meeting of Signatories. Comsat and the other Intelsat signatories, a number of which are private companies like Comsat, deal with wholly commercial matters, without governmental direction, such as the operations and marketing of the Intelsat system. *See* First Amended Complaint (App. C-3, 4, 6, 14, 15, 17, 18). The instructional process is thus inapplicable to Comsat's actions at the Meeting of Signatories. To the extent Comsat has sought to imply otherwise in its brief in opposition, Comsat has misstated its role and the function of the instructional process of Intelsat.

The only significant involvement of Comsat in the instructional process arises in Comsat's participation in the Board of Governors of Intelsat. Here, Comsat receives instructions from the United States Government as to the Government's position on agenda items before the Board of Governors, if any such items are of interest to the Government and if the Government has a position it wishes Comsat to present.

Large areas of activity therefore exist where Comsat operates as an Intelsat signatory entirely free of Government instructions and direction. Comsat's brief in opposition obscures this important fact.

Second, the complaint of PAS does not in any way challenge any of Comsat's actions in those extremely limited areas where Comsat has received Government instructions. PAS alleges no violation of law by Comsat in following or implementing any instruction of the United States Government. Rather, the complaint limits its claims to conduct in which Comsat has engaged through its own independent and discretionary functions, outside the bounds of Government direction.

In the brief in opposition, Comsat counters by arguing, first, that Comsat is always acting subject to Government instructions, and, second, that the language of the complaint does not limit itself to non-instructional situations. The first argument is factually false, as shown in the preceding discussion. The second both misreads the complaint and misapplies controlling law.

The allegations of the complaint do not in any way challenge or call in question any Government instruction to Comsat or any action of Comsat taken under any Government instruction. To the contrary, the complaint alleges that Comsat has acted contrary to and in derogation of United States Government policy to promote competition in space satellites through the development of alternative systems, such as PAS. *See* First Amended Complaint (App. C-1, 17-27). Moreover, the Communications Satellite Act itself expressly recognizes that Comsat may so act, and provides for remedies, including, implicitly, private antitrust actions like this. Section 403 of the Act permits suit by the Government against Comsat for engaging in "any action, practices, or policies inconsistent with the policy and purposes declared in" section 101 of the Act, which provides, *inter alia*, that the conduct of Comsat "shall be consistent with the Federal antitrust laws." Section 403 goes on to specify that the Government enforcement it authorizes shall not relieve Comsat "of any punishment, liability, or sanction

which may be imposed otherwise . . . " 47 U.S.C. Sec. 743. The complaint of PAS thus is fully in line with the Act itself.

In addition, the law requires that the complaint be read, when opposed by a motion to dismiss, in the light most favorable to PAS. The lower courts were required to "follow, of course, the accepted rule that a complaint should not be dismissed . . . unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). "This rule applies with no less force to a Sherman Act claim . . . " *George C. Frey Ready-Mixed Concrete, Inc. v. Pine Hill Concrete Mix Corp.*, 554 F.2d 551, 554 (2d Cir. 1977). "[D]ismissals on the pleadings are especially disfavored in antitrust cases." *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 746 (1976). Obviously, here, given the choice between reading the complaint as challenging immune conduct of Comsat acting subject to Government instructions, or non-immune non-instructed conduct, the foregoing authorities compel the latter reading, even were there any doubt as to the meaning of the complaint.

Thus, not only does Comsat engage in significant conduct at Intelsat free of Government instruction, but the complaint attacks that very conduct as to which the Government does not instruct Comsat.

The immunity conferred by the Second Circuit, however, does not observe this line of demarcation. Rather, the Second Circuit immunizes all conduct of Comsat at Intelsat, whether subject to Government instruction or not. The Second Circuit sweeps within its grant of immunity everything Comsat may do at Intelsat, even if not subject to Government instruction, including discretionary and unsupervised actions in the Meeting of Signatories, which PAS has challenged in its complaint. This is not a narrow and carefully crafted grant of immunity, as Comsat would have this Court believe. It is crudely drawn, unnecessarily broad, and inclusive of much conduct that is properly the concern of the antitrust laws. As this Court has oft cautioned, immunity from the antitrust laws is disfavored, and

should be strictly construed to be no broader than necessary. *Nat'l Gerimedical Hosp. v. Blue Cross of Kansas City*, 452 U.S. 378, 388-89 (1981).

Notwithstanding Comsat's efforts to obscure what has happened, those principles have been trampled on here; and this Court should grant review to ensure their preservation.

CONCLUSION

For the reasons stated in its petition and this reply, PAS respectfully asks this Court to grant certiorari to review the decision below.

Dated this 3rd day of February, 1992.

Respectfully submitted,

GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.

THE LAW FIRM OF JOSEPH M. ALIOTO

Counsel for Petitioners

Daniel R. Shulman
Joseph M. Alioto